

DURATION OF COPYRIGHT TERM OF PROTECTION

Written comments submitted for the hearing ... 1993

before the

United States Copyright Office

Library of Congress

Docket RM 93-8

XX

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1993

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in

Docket RM 93-8

Notice of Public Hearing and Notice of Inquiry

Duration of Copyright Term of Protection

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**GENERAL COUNSEL  
OF COPYRIGHT**

**SEP 22 1993**

**RECEIVED**

Before the

UNITED STATES COPYRIGHT OFFICE

LIBRARY OF CONGRESS

Washington, D.C.

Comment Letter

**RM 93-8**

No.     

In the Matter of : -----

DURATION OF COPYRIGHT : Docket No. RM 93-8

TERM OF PROTECTION : -----

**COMMENTS OF THE NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.**

The following comments represent the views of the National Music Publishers' Association,, Inc. ("NMPA") and are offered in accordance with the Copyright Office's Notice of Public Hearing and Notice of Inquiry, 58 Fed. Reg. 40,838 (July 30, 1993), concerning the possible extension of the duration of copyright protection under United States law. Founded in 1917, NMPA is the principal trade association for the American music publishing community. Its 514 members are the largest and most active music publishing entities in the world.

Music publishers are, generally speaking, copyright holders of musical works. Their role is to nurture the creativity of songwriters and composers through artistic, professional, and economic support. Following the creation of the musical work, the publisher functions as its promoter, seeking

recordings, performances, and other modes of distribution of the work. The music publisher also administers the copyright in the work and takes steps to protect it from unauthorized exploitation, including acting as an advocate (sometimes individually, sometimes through NMPA) for strong copyright protection and enforcement throughout the world. The music publisher also serves as a friend and counsellor in the overall development of the creator's career. For all of their contributions to the creative process, music publishers enjoy a close partnership with their songwriter and composer colleagues.

A proposal to extend the duration of copyright protection under United States law is truly a proposal for the benefit of the arts. Many sound arguments may be offered in its support, several of which have already been noted by the Copyright Office in the background discussion that accompanied the announcement of these hearings. In light of the special role that music publishers play in the creative process, and because of the strong bonds between publishers and their songwriter and composer partners, NMPA is especially pleased to voice its support for term extension. Extending the term of U.S. copyright protection would have a profound, beneficial effect upon the songwriting and music publishing industry without causing harm to the interests of any person or entity.

### Legislative Background

During the legislative debate preceding the enactment of the 1976 Copyright Act, Congress clearly stated its intention for the United States to conform to the internationally recognized copyright principle that, at minimum, the author and her next two generations of descendants should receive fair economic benefit from the exploitation of the author's works. See S. Stewart, International Copyright and Neighboring Rights, Section 4.61 (2d ed. 1989). The adoption of the "life of the author plus fifty years" term of protection in the 1976 Act was based upon the Berne Convention's term of minimum protection -- recognized at that time to generally represent the term necessary to guarantee benefits to two generations of the author's family. H.R. Rep. No. 1476, 94th Cong., 2d Sess. 134-135 (1976) (hereinafter "House Report").

Given the increases in life expectancy and the trend toward postponing childbearing until somewhat later in life, however, it is questionable whether a mere fifty year term beyond the author's death continues to achieve the desired goal. Taking a plausible example, an author who dies at age 70 survived by young grandchildren cannot reasonably expect that his works will continue under copyright protection throughout their lifetimes. An extension of the term of protection by twenty years would better reflect the evolving life patterns of Americans as we enter the 21st century.

### A Matter of Fairness

There are, in addition, special circumstances affecting individual songwriters and composers which provide further evidence of the fairness underlying the term extension. For example, works created by a young songwriter who suffers an untimely death at the height of his creativity clearly will not receive the "two generations" of protection envisioned under the Act. The family of naturalized American songwriter John Lennon is a victim of this anomaly. His assassin effectively reduced the term of copyright protection for the musical works published by Lennon in the final year of his life to a mere fifty years. This represents a shorter term of protection than the fifty-six years to which he and his family would have been entitled under the unamended 1909 Copyright Act. Protection of Lennon's later works under U.S. law will very likely expire during the lifetimes of his children.

Other American songwriters falling into this unfortunate category include Harry Chapin (killed in a car accident in 1981 and survived by a widow and five young children), Ricky Nelson (killed in a plane crash in 1988 and survived by a three teenage children), Stevie Ray Vaughan, Karen Carpenter and others. The families of creators from other disciplines, such as Jim Henson and Keith Haring, are similarly affected.

The 50 year measurement has an equally unfavorable effect on the prolific composer who continues creating well into maturity. The late Leonard Bernstein's most recent works, for example, will enjoy a relatively shorter term of protection than will his pre-1978 works, which are effectively protected for seventy-five years from the date of their initial publication.

NMPA is concerned over these inequities. There is a strong tradition in this country that a person who amasses an estate in the form of cash, stock or real estate has a right to expect that his legacy will provide benefits and security (including food, clothing, shelter, and education) to his grandchildren and other heirs. Congress has every reason to provide this same peace of mind to creators. The proposal to extend the term of copyright protection for an additional twenty years is a clear step towards preserving the Congressional intent that underlies the 1976 Copyright Act: to provide protection to the surviving spouse, children and grandchildren of the author.

#### The Public Benefits

The Constitutional framers were keenly aware that economic rewards are the best incentive to encourage the progress of science and the arts in the United States. In today's world, we have seen a near-universal adoption of the

principle that strong copyright laws foster, rather than discourage, the creation and broad dissemination of cultural works. Where adequate and effective copyright protections exist, creativity flourishes and wide distribution to the public of copyrighted works at competitive prices is commonplace. Where protection and enforcement are weak, incentive and investment are often replaced by artistic indifference and rampant piracy.

Moreover, when a work falls into the public domain, its availability to the public in that territory is often diminished. Without guarantees of exclusivity in manufacturing and distribution, a publisher will often decline to invest in the publication of a public domain work for fear of a severely diminished economic return. The result is a dearth of quality copies of many works after their term of protection has expired. See House Report at 134.

Thus, the exclusive rights conferred by the U.S. Copyright Act on creators and copyright owners serve the public in two ways: by providing incentives for authors to create new works, and by providing similar economic impetus for publishers and other copyright owners or assignees to distribute the works broadly to the public. The extension of the term of U.S. copyright protection to "life of the author plus seventy years" will serve to strengthen these

incentives to the benefit not only of creators and copyright owners, but in a broader sense to the public as well.

The International and Trade Implications

Perhaps the most persuasive reasons for extending the term of U.S. copyright protection are related to the international and trade implications of such legislation.

As is more fully set forth in the joint comments submitted by the Coalition of Creators and Copyright Owners, extension of U.S. protections would accomplish three key goals in this area. They would: (1) improve the standing of the U.S. as a leader in the important economic area of international copyright protection; (2) guarantee reciprocal protections in the European Community ("EC") and in other territories; and, (3) help sustain the trade surplus provided to the U.S. economy by the American copyright industries.

More and more, the U.S. economy is supported by the production of intellectual property by American creators.

In 1992, a report prepared for the International Intellectual Property Alliance estimated that the American copyright industries account for close to 6 percent of the U.S. gross national product. These industries produced over \$34 billion in foreign sales in 1990, substantially reducing the U.S. trade deficit. Growth among American copyright industries averaged more than double the growth rate of the U.S. economy during the period 1977-90. This vital pattern

can only be sustained in a global environment hospitable to strong copyright protection.

In light of such statistics, the benefits to the United States of maintaining a leadership position in the international copyright community are self-evident. By extending the term of U.S. protection, we will send a clear signal to our trading partners in Latin America, the Pacific Rim, Eastern Europe, and elsewhere that we intend to support our demands for increased protections in those territories with improvements in our own laws.

Further, by satisfying the reciprocity requirements of the EC's soon to be adopted "life plus 70" harmonized copyright term, the U.S. will avoid discriminatory treatment and devaluation of U.S. works in the vast and important EC market.\* Our balance of trade will be similarly augmented,

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\* According to NMPA's most recent International Survey of Music Publishing Revenues, 17 nations of Western Europe accounted for approximately 58% of total music publisher revenues (including public performance, mechanical, print and other royalty income) during the years 1990-91, compared with 28% earned in North America.

with the continued protection in Europe for twenty more years of great American works such as "Moonlight Serenade" by Glenn Miller and "Ain't Misbehavin'" by Fats Waller (two works among many which will soon otherwise pass into the public domain in the EC).

#### Other Changes

NMPA also supports other related changes in the U.S. Copyright Law to ensure equitable treatment of all works, creators and copyright owners. These include: extension of the copyright term regarding pre-1978 works and all works for hire for an additional twenty years; adjustment of other provisions governing the rights of copyright owners and assignees; and, immediate enactment of interim legislation to ensure that no works fall into the public domain during consideration of more comprehensive copyright term extension legislation (as was enacted during consideration of the 1976 Copyright Act).

#### Affected Works

Finally, it is important to note that in a very real sense, Congress would be acting to preserve American culture by enacting copyright extension legislation. According to Library of Congress records, tens of thousands of American musical works fell into the public domain during the 1980's,

and early 1990's including such well known favorites as "Alexander's Ragtime Band," "Take Me Out To The Ballgame," "Beale Street Blues," "Over There," and one of the most recorded songs in history, "St. Louis Blues."

Over the next twenty or so years, the stakes will be much higher. Many works written or co-written by American musical giants such as Gershwin ("Rhapsody In Blue," "Summertime"), Hammerstein ("Ol' Man River"), Ellington ("Caravan," "Sophisticated Lady"), Porter ("Let's Do It"), Harberg ("Brother Can You Spare A Dime," "Over The Rainbow"), Berlin ("A Pretty Girl Is Like A Melody"), Calloway ("Minnie The Moocher"), Rodgers ("My Funny Valentine," "Slaughter On Tenth Avenue"), and other works including "It Had to Be You," "Am I Blue," "Sweet Georgia Brown," and "Tea For Two," will be injected into the public domain. The lapse of protection for these works will be detrimental not only to the authors' families,\* but to the U.S. balance of trade and the U.S. public, as well. It is imperative for Congress to augment protection of these national treasures.

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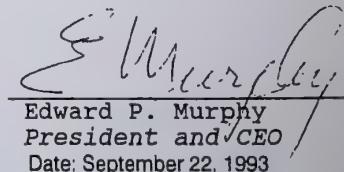
\* Music publisher Warner/Chappell Music estimates the annual U.S. income of works it and its songwriter partners will lose to the public domain between 1993-1999 at \$1.8 million.

Conclusion

The proposal to extend the term of U.S. copyright protection can truly be characterized as a "win-win-win" proposition. Such legislation would benefit composers, their families, and their music publisher partners by increasing the value of copyrighted works. The American public would likewise benefit from the increased creativity and availability of works resulting from a longer period of protection. Finally, the U.S. economy as a whole would benefit from the expanded use and protection of American works abroad.

NMPA looks forward to the Copyright Office's further examination of this timely issue, and is prepared to expand upon or clarify its comments at the Office's request. We also look forward to assisting the Copyright Office in any manner it may deem helpful in order to support legislative action in this important area.

Thank you.



Edward P. Murphy  
President and CEO  
Date: September 22, 1993

Charles J. Sanders  
Frank S. Rittman  
Susan O. Mann  
of counsel

RAE COUNSEL  
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EP 22-1993

**Comments of Music Publishers' Association ("MPA")**

**to the U.S. Copyright Office**

**RECEIVED On Increasing the Term of U. S. Copyright Protection**

**September 29, 1993**

Comment Letter	
RM	93-8
No. 2	

The following comments represent the views of the Music Publishers' Association of the United States ("MPA") and are offered in response to the Copyright Office's Notice of Public Hearing and Notice of Inquiry concerning the extension of copyright protection under United States law.

MPA is a trade association for American music publishers whose constituency is primarily involved with the production and sale of printed "sheet" music. The high costs associated with these activities, especially with regard to the publication of classical or so-called "serious" copyrighted music, make it crucial for U.S. copyright law to provide for a period of protection sufficient in length to allow for a return on the music publisher's substantial investment. Only under such conditions can the continued development and dissemination of new serious works by American composers be ensured. See H.R. Rep. No. 1476, 94th Cong., 2d Sess. 134 (1976).

The rising costs of production make investment in serious copyrighted musical works a very speculative undertaking. For example, in the United States typical printing costs for a symphonic work average \$15,000, and the market for recovering that investment is small. Printing costs for a full operatic work range from \$100,000 to \$150,000. These investments do not include advances often paid by the publisher to the composer.

profit to the creator's descendants and to the music publisher owner within the current term of copyright protection.

The problem of recoupment is further highlighted by situations in which a composer dies soon after completing a serious work. As the comments of the National Music Publishers' Association explain, the later works of Maestro Leonard Bernstein will receive only a little over fifty years of protection.

Recoupment of a substantial investment in such works may not be realized due to the relatively shorter term of copyright, a factor that may mitigate against publication. What a loss it would be for music lovers in America and throughout the world to be deprived of hearing the later works of this great master due to economic considerations prompted by insufficient copyright protection.

Finally, it should be noted that American composers of serious works labor under a strong competitive disadvantage with their European counterparts. Since the 1800's, American classical composers and publishers have had to fight against a bias among conductors towards European composers. Barber, Bernstein, Aaron Copland, Duke Ellington and Charles Ives have only recently been recognized as homegrown geniuses, but even now their music is marginally performed when compared to the European masters of past generations.

Europeans take their culture seriously. It is no coincidence that there has been a great tradition of state support for the public performance and broadcast of European works performed by European artists (which also benefits European publishers). On top of this support, many European countries -- and their music creators and publishers -- will soon enjoy a copyright term that is 20 years longer than the term currently provided by U.S. law. These nations plan to deny the

benefit of their longer term of protection to U.S. nationals unless and until the United States enacts reciprocal protections. Such discrimination will further erode the value of the U.S. music catalogs in Europe.

Given that the U.S. National Endowment for the Arts and state arts agencies provide only a fraction of the direct support that many European countries grants their composers, American composers and music publishers need another mechanism to help to level the playing field with the Europeans. An extension of the term of U.S. copyright would go a long way toward that end. Otherwise, the gains made by the American composers mentioned above -- recognized as the first generation of truly world class American composers of serious music -- will be squandered.

#### Conclusion

In sum, extension of the term of U.S. copyright protection would provide much needed support for serious music composers and music publishers. The earning cycles of the serious music market make such an extension especially beneficial to the serious music community, which would thereby derive more working capital to invest in the encouragement and dissemination of new classical works. Naturally, this advancement of American culture would also greatly benefit the American public.

MPA endorses the comments submitted by the Coalition of Creators and Copyright Owners, the National Music Publishers' Association, and the International Confederation of Music Publishers. We thank the U.S. Copyright

Office for the opportunity to express our views in favor of increasing the term of U.S. copyright protection, and look forward to working with the Register on this issue in the future.

Respectfully submitted,



Todd Vunderink  
President  
Music Publishers' Association  
September 22, 1993

Correction to Comment Letter RM 93-8

No 3

## WHITE & CASE

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JEDDAH  
RIYADH

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September 27, 1993

re Duration of Copyright Term of Protection  
(Docket No. RM 93-8)

GENERAL COUNSEL  
OF COPYRIGHT

Dorothy Schraeder, Esq.  
General Counsel  
United States Copyright Office  
Library of Congress  
Dept. 100  
101 Independence Avenue  
Washington, D.C. 20540

SEP 28 1993

RECEIVED

Dear Dorothy:

Due to an inadvertent error, one of the signature blocks on the Joint Comments of the Coalition of Creators and Copyright Owners was incorrectly transcribed. In the signature block for the Musical Theatre Coalition (on page 27 of the Joint Comments), the signatory, Lisa Alter, should not be described as "Counsel," and that word should be deleted from all record copies.

Sincerely,

I. Fred Koenigsberg

BY TELECOPY

cc: Lisa Alter, Esq.

**DISSEMINATE DOWNSIDE  
DR GORTRIGHT**

## Comment Letter

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Before the  
UNITED STATES COPYRIGHT OFFICE  
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Washington, D.C.

RM 93-8

No. 3

In the Matter of

1

**DURATION OF COPYRIGHT  
TERM OF PROTECTION**

Packet No. BM 93-8

1

**JOINT COMMENTS OF THE  
COALITION OF CREATORS  
AND COPYRIGHT OWNERS**

The undersigned parties, representing creators and copyright owners (collectively, the "Coalition of Creators and Copyright Owners" or the "Coalition") submit these written Joint Comments in accordance with the Copyright Office's Notice of Public Hearing and Notice of Inquiry of July 30, 1993, 58 Fed. Reg. 40,838.

The Copyright Office seeks comments in connection with its planned report on possible extension of copyright duration under United States copyright law. We strongly support such an extension. We do so because we believe extension is necessary if United States works are to be properly protected internationally, because extension will enhance our nation's economy, because developments since enactment of the 1976 Copyright Act call for extension and, most important, because we in the United States should do all we can to encourage creativity generally and American creativity specifically.

## I. THE COALITION

The Coalition of Creators and Copyright Owners represents those who create and own virtually every type of copyrighted work -- literature, drama, audiovisual works such as motion pictures and television programs, music, pictorial, graphic and sculptural works, and photographs. The Coalition includes commercial and noncommercial entities, for profit and non-profit enterprises, businesses and educational institutions. The unanimity of view we have here among so broad-based a group of creators and copyright owners has rarely been seen before. That unanimity bespeaks the importance of the issue.

## II. THE COPYRIGHT OFFICE NOTICE

As the Copyright Office Notice states, the current term of copyright protection in the United States generally equals the life of the author plus 50 years for post-January 1, 1978 works and 75 years for pre-January 1, 1978 works. 17 U.S.C. §§ 302(a), 304. The European Community ("EC") has recently adopted a directive to harmonize the copyright term in all its member countries for a duration equal to the life of the author plus 70 years.<sup>1</sup> Thus, important developments abroad have led the Copyright Office to undertake to study and report to

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<sup>1</sup> The directive is subject to ratification by the European Parliament later in the year, a ratification which is expected as a pro forma step.

Congress on the possibility of copyright term extension in the United States.

III. UNITED STATES COPYRIGHT TERM  
SHOULD BE EXTENDED TO KEEP PACE  
WITH INTERNATIONAL DEVELOPMENTS

There are several compelling reasons for extending copyright term under United States law. We start where the Copyright Office started -- with the international developments leading to a harmonized life-plus-70-years term in the EC.

A. The EC Life-Plus-70-Years Directive

Few economic developments in recent years have been as important as the establishment of a single market in the European Community. The combined EC gross national product is about 28% of the world's gross national product. "Viewpoints," New York Times, January 17, 1993, at Sec. 3, p. 13. The EC and the European Free Trade Area states collectively conduct about 40% of all world trade. Jehoram, Grelen and Smulders, The Law of the E.E.C. and Copyright, in Geller, International Copyright Law and Practice, § 1 at EEC-3 (1990). The EC established a single internal market effective January 1, 1993. Among the barriers to that single market -- barriers the EC seeks to eliminate -- are the different substantive provisions of each member state's copyright laws.

Among the most fundamental differences among those national copyright laws is the variation in copyright term. All EC members are members of the Berne Convention. They all adhere to Berne's minimum required term of life of the author plus 50 years. But that term is only a minimum -- Berne members are free to adopt longer terms, and some, but not all, have done so. Thus, for example, Belgium, Greece, Italy, Netherlands and the United Kingdom have a basic term of life-plus-50-years; Spain has a basic term of life-plus-60-years; and Germany has a basic term of life-plus-70-years. France protects most works for the basic term of life-plus-50-years, but for musical works the term is life-plus-70 years.

These differences in term are seen to impede the free movement of goods and services, and to distort competition, within the common market. Hence, harmonization of copyright duration is necessary. That is to say, the copyright terms of all member states' national laws have to be made equivalent. That harmonization is to be accomplished through a Directive of the EC Council of Ministers adopted June 22, 1993. Council Directive 93/\_/EC (the "EC Directive").

Obviously, the harmonized term could be of any duration as long as it met the Berne minimum. The EC chose the longest term, life-plus-70-years, for a number of reasons:

- The harmonized term would not reduce current protection anywhere in the EC. EC Directive, Recital (9).
- A high level of protection is needed because the rights involved are fundamental to intellectual creation. Id., Recital (10).
- The resulting maintenance and development of creativity is in the interest of authors, cultural industries, consumers and society as a whole. Id.
- A life-plus-70-years term meets the needs of the single internal market. Id. Recital (11).
- A life-plus-70-years term would establish a legal environment conducive to the harmonious development of literary and artistic creation in the EC.<sup>2</sup> Id.

Thus, the EC Directive requires all member states to amend their national copyright laws to embody a basic copyright term of life-plus-70-years.<sup>3</sup> EC Directive, Art.

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<sup>2</sup> This recital could serve as a paraphrase of our nation's Constitutional purpose for copyright: to promote the progress of science and useful arts. U.S. Const., Art. I, Sec. 8, cl. 8.

<sup>3</sup> As is the European tradition, and as is allowed by Berne, the EC Directive also establishes uniform shorter terms for a few particular types of works. Thus, anonymous and pseudonymous works have terms of 70 years from public dissemination. EC Directive, Art. 1.3. There are also distinctive provisions determining who owns cinematographic

1. They must do so by July 1, 1995. EC Directive, Art. 13.

B. Why the United States Should Adopt  
the Life-Plus-70-Years Standard

Copyright, of all types of property, transcends political boundaries. That is true within nations (as evinced by our Constitution's recognition of the necessity for Federal copyright protection to replace the State protection which existed under the Articles of Confederation). It is also true among nations.

Recent history has seen a true internationalization of the demand for and use of copyrighted materials -- movies, music, books, art and computer software, flow freely between nations. People around the world line up to see "Jurassic Park," buy the music of the Gershwins, see productions of "A Chorus Line," use Microsoft Windows software, read the latest John Grisham novel, and buy reproductions of Roy Lichtenstein's art. In the world of copyright, we truly inhabit Marshall McLuhan's global village.

What is perhaps most striking about this internationalization is that the copyrighted works the

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and audiovisual works, and on whose life the term for such works is based. EC Directive, Art. 2. Existing American copyright law makes no distinction among types of works for purposes of duration, and our concepts of copyright ownership differ. As we discuss below, there is no need to harmonize our law with the EC Directive in these areas.

world wants are overwhelmingly works created in the United States. Our country's authorship sets the standard for the world.

The consequence, of course, is not only cultural, but economic. American copyrighted works are far more popular abroad than foreign works are here. And thus foreign payments for works of American authorship far exceed American payments for work of foreign authors. Indeed, intellectual property generally, and copyright in particular, are among the brightest spots in our balance of trade.

In February, 1988, when the United States was considering adherence to the Berne Convention, Commerce Secretary C. William Verity reported that "U.S. copyright and information-related industries account for more than 5 percent of the gross national product and return a trade surplus of more than \$1 billion." BNA Int'l Trade Reporter, February 28, 1988. More recent estimates reveal that more than 5.5 million Americans work in our copyright industries, accounting for over 5 percent of United States employment, and that our nation's film industry alone contributed more than \$4 billion to the nation's balance of trade. "Gephardt Bill Targets GATT," The Hollywood Reporter, May 5, 1993.

It is therefore not an exaggeration to say that adequate international protection of United States

copyrights is a matter of the highest importance to our national economic security.

In light of the EC action, copyright term extension in the United States has now become an essential element in safeguarding that economic security. The reason is to be found in some basic principles of international copyright.

#### 1. The Principle of National Treatment

The basic principle of international copyright relations under the Berne Convention is the principle of national treatment. Berne Convention Art. 5(1). Each Berne member state is required to protect works created by foreign nationals under its own substantive copyright law (which must, of course, meet Berne's minimum standards for protection). Thus, a copyrighted work created by a French national is protected in the United States under our copyright law and a work created by an American citizen is protected in France under French copyright law.

If the principle of national treatment, which applies generally, also applied to the duration of copyright protection, no term extension in the United States would be necessary for American creators and copyright owners to reap the benefit of the EC's term extension. Unfortunately, however, there is an exception to the principle of national treatment: the rule of the shorter term.

2. The Rule of the Shorter Term

The Berne Convention permits reciprocal, rather than national, treatment as to the duration of copyright. Each member state may follow the rule of the shorter term. Berne Convention, Art. 7(8). If the duration of protection in a foreign state is shorter than in a member state, that member state may limit the protection it gives to works of the foreign state's nationals to the latter's shorter copyright term. Germany's current term is life-plus-70-years; under the principle of national treatment, Germany would protect works of United States citizens for life-plus-70-years. But, under the rule of the shorter term, Germany would protect works of United States citizens only for the United States' shorter terms of life-plus-50-years for post-January 1, 1978 works, or 75 years for pre-January 1, 1978 works.

3. Invocation of the Rule of the Shorter Term in the EC Directive

The EC Directive will require all member states to adopt the rule of the shorter term. EC Directive, Art. 7. Thus, after the life-plus-70-year term goes into effect in the EC on July 1, 1995, if United States law remains unchanged, works of United States authors will be protected for a term that is shorter by 20 years in Europe than works of their European colleagues.

#### 4. The Negative Effect of Different Terms

If our copyright term is shorter than the EC term, the effect will be harmful for our country in two ways.

First, history teaches that EC nations will use our failure to provide commensurate protection as an argument against us when we seek better protection for our works in their countries, e.g., in GATT negotiations.

Second, our creators will be deprived of 20 years of valuable protection in one of the world's largest and most lucrative markets, cutting short a vital source of foreign revenues. Our film and television industries alone have an estimated \$3.5 billion annual trade surplus with the EC. Valenti -- GATT May Hurt Hollywood Film and TV Exports, CNN transcript #344-2, August 16, 1993. Indeed, given that we can obtain 20 years of protection in the EC at virtually no cost to ourselves, by extending our own copyright term, there is simply no good reason not to do so.

In sum, it is clearly in our national interest to extend our copyright term so as to take advantage of the opportunity being handed to us for extended protection in the lucrative EC market.

C. The Benefits of Term Extension  
in Trade Negotiations

In the 1980s, the increased importance of foreign markets to American authors and copyright owners made intellectual property a key agenda item for our trade representatives in their negotiations with other countries. Their experience, repeated many times in both multilateral and bilateral trade negotiations, was that the shortcomings of our copyright law were used against us when we called for stronger protection for American works in foreign countries.

Certainly, the most frequently used argument against us in the 1980s was that we were in no position to chastise other countries for low levels of protection when our own law did not even meet the minimal Berne standards. We put an end to that argument when we amended our copyright law and joined Berne in 1989 and so were able to be more successful in our intellectual property trade negotiations.

Now, if history is any guide, we shall face the same argument if we do not extend our copyright term. How can we seek better protection in Europe, the argument will go, when we do not even grant the same term of protection granted by all EC members? But if our term of protection equals that of the EC, the same benefits we reaped when we joined Berne -- greater success in our intellectual property trade negotiations -- will follow.

D. The Question of Retroactivity --  
What To Do About Foreign Works Which  
Ran Afoul of Our Copyright Formalities

Because EC countries now have varying terms, and generally invoke the rule of the shorter term, the EC faced a question of how to harmonize copyright term internally, within the common market: What should be done about works whose life-plus-50-years had run, but which would still be protected if a life-plus-70-years term applied? The EC resolved to restore protection to those works: the effect of the harmonized term will be that works which are not protected by copyright because their terms were less than life-plus-70-years and had expired, but which would still have been protected on July 1, 1995 had a life-plus-70-year term been in effect, will once again be protected in every EC member country, for a full life-plus-70-year term. EC Directive, Art. 10.2. (This "restoration" of protection is subject to existing "acts of exploitation," EC Directive, Art. 10.3.)

As we consider term extension in the United States, we too must consider restoration of protection for foreign works here. (This is known in copyright theory by the term "retroactivity," which we shall use.) The case for retroactivity is especially compelling here because of the history of United States copyright law. Before March 1, 1989 (when the Berne Convention Implementation Act became effective), and especially before January 1, 1978

(when the 1976 Copyright Act became effective), failure to comply with technical requirements unique to our law (such as the requirement that all copies of published works bear a copyright notice in an exact form and position, or the necessity to register and renew copyright in pre-1978 works) deprived many foreign works, of United States copyright protection because foreign creators and copyright owners were simply not aware of or could not comply with these technical formalities.

If we were to restore the copyrights to those works which, but for these formalities, would still be protected under our law, we would be giving up little and gaining a great deal. The concomitant restoration of protection to United States works abroad would be very significant commercially. Once again, the far greater popularity of American works overseas compared to foreign works here would result in our economic benefit.

Granting protection retroactively is not a simple matter. It involves questions of a Constitutional nature. But we believe it can and should be accomplished. Indeed, such retroactivity of protection was part of the package we negotiated in the North American Free Trade Agreement ("NAFTA") now awaiting Congressional approval. NAFTA Annex Article 1705.7 calls for the United States to protect Mexican motion pictures which are not now protected by copyright in the United States because of failure to comply

with our law's formalities. Our national interest similarly argues for granting such retroactivity of protection as part of term extension.

IV. APART FROM CURRENT INTERNATIONAL  
CONSIDERATIONS, TERM EXTENSION MAKES SENSE

The arguments for term extension are not new. They were valid and compelling when we revised our law and extended our copyright term in 1976, and remain so today.

A. The Arguments In Favor of Term  
Extension Expressed in the  
Legislative History of the 1976  
Act Are Still Compelling Today

When Congress began to study revision of the 1909 Copyright Act, it was clear that 56 years was too short a term. The initial inquiry focussed on whether that longer term would be for a fixed term of years or would be based on the life of the author plus an additional period.

Guinan, Duration of Copyright, in Studies on Copyright, Vol. 1, pp. 473-502 (The Copyright Society of the U.S.A. 1963); "Duration of Copyright," in Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law, in Studies on Copyright, Vol. 2, pp. 1247-1258 (The Copyright Society of the U.S.A. 1963). Almost immediately, a consensus on the life-plus-50-years term was reached.

Many sound arguments were advanced for lengthening the term of copyright. Some of those arguments (e.g., the abolition of the confusing renewal system, or the benefits of having the copyrights in all works of a

given author expire at the same time) are no longer relevant. But others remain compelling today -- indeed, may be seen as prescient -- and support a 20 year term extension.

1. International Harmonization

International harmonization of copyright duration is a recurring -- indeed, the most common -- theme in the legislative history of the 1976 Copyright Act as to term of copyright.

The principal international harmonization arguments made then are equally applicable now: 1) term extension is a matter of international comity and would bring the United States in line with other similar countries; 2) term extension would allow the United States to be a leader in international copyright, while failing to extend copyright duration would relegate the United States to second class status; 3) term extension would discourage retaliatory legislation and retaliatory trade postures; 4) term extension would facilitate international trade; and 5) term extension would foster greater exchange of copyrighted property between countries.

Representative comments early in the legislative history stressed the need for harmonization of United States law on duration with the European copyright term, as follows:

- "There is no reason why the length of the copyright term should not be [the same] . . . as is the case in most European countries."<sup>4</sup>
- "[I]n an age when works travel across boundaries in the twinkling of an eye, it is highly desirable to establish a uniform term internationally."<sup>5</sup>
- "When it is considered that a sizeable proportion of American books, motion pictures, and musical compositions, for example, find their way into the European market, it is sometimes embarrassing to find that the term of protection has expired in the United States before it has expired in Europe. With the development of such communications media as Telstar, many legal problems could also result from this discrepancy."<sup>6</sup>

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<sup>4</sup> Copyright Law Revision, 1965. Hearings Before Subcomm. 3 of the House of Reps. Comm. on the Judiciary, 89th Cong., 1st Sess., 27 (1965) (statement of Cong. John V. Lindsay).

<sup>5</sup> Id. at 1866 (statement of Abraham L. Kaminstein, Register of Copyrights).

<sup>6</sup> Id. at 32 (statement of George D. Cary, Deputy Register of Copyrights).

Other comments highlighted the trade value of a term equal to that of European nations: A United States term different from that of Europe "puts us at a disadvantage vis-a-vis other people in our export markets."<sup>7</sup>

The 1967 House Report made an especially strong argument for the business and trade necessity of conforming United States copyright duration to that of significant export markets:

"A very large majority of the world's countries have adopted a copyright term of the life of the author and 50 years after his death. Since American authors are frequently protected longer in foreign countries than in the United States, the disparity in the duration of copyright has provoked considerable resentment . . . The need to conform the duration of U.S. copyright to that prevalent throughout the world is increasingly pressing in order to provide certainty and simplicity in international business dealings. Even more important, a change in the basis of our copyright term would place the United States in the forefront of the international copyright

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<sup>7</sup> Copyright Law Revision: Hearings on S. 1006 Before the Subcomm. on Patents, Trademarks and Copyrights, 89th Cong., 1st Sess. 113 (1965) (statement of John Schulman for the American Bar Association Committee on Revision of the Copyright Law).

community, and would bring about a great and immediate improvement in our copyright relations."<sup>8</sup>

These sentiments were echoed by Congressman Poff in a contemporaneous statement on the House floor: . copyright term harmonization would have the benefits of "protect[ion] of American authors marketing their works abroad," and avoiding the rule of the shorter term which gives "an unfair advantage to a competing foreign work of the same age if the foreign statute provides a longer term."<sup>9</sup>

Creators, too, directly expressed their concerns about the disadvantage they would suffer vis-a-vis their European colleagues if the United States term were shorter than the European term. As one creator's group said in a letter reprinted in the Congressional Record: "[T]here seems to be no valid reason why an American should receive less protection than his European colleagues."<sup>10</sup>

Congress even took note of the fact that terms longer than life-plus-50-years might become the norm. The 1974 Senate Report argued that the proposed life-plus-50-years term was necessary for adherence to Berne and

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<sup>8</sup> H.R. Rep. No. 83, 90th Cong., 1st Sess., 101-02 (1967).

<sup>9</sup> 113 Cong. Rec. 8501-02 (1967).

<sup>10</sup> 114 Cong. Rec. S. 1703-04 (daily ed. May 1, 1968) (letter by Howard Hanson, Director, Institute of American Music, University of Rochester).

continued: "It is worth noting that the 1965 revision of the copyright law of the Federal Republic of Germany adopted a term of life plus 70 years."<sup>11</sup> Indeed, later in the revision process, Senator Hugh Scott remarked that life-plus-50-years should only be seen as a minimum duration, because "[s]ome countries have expanded their term to life plus 70 or more and other nations are considering similar actions."<sup>12</sup>

Senator Scott's prediction has now come to pass. All these reasons for extending United States copyright duration in the 1976 Copyright Act are, we submit, valid today.

## 2. The Longevity of Authors and Their Heirs Has Increased

Another frequently voiced argument for term extension in the revision effort leading up to the 1976 Act was that lifespans had increased dramatically since 1909. As we have seen, this same reason is used by the EC to justify the current term extension:

". . . the minimum term of protection laid down by the Berne Convention, namely the life of the author and fifty years after his death, was intended to provide protection for the author and the first two generations of his

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11 S. Rep. No. 983, 93d Cong., 2d Sess., 169 (1974).

12 122 Cong. Rec. 3834 (1976).

descendants; . . . the average lifespan in the Community has grown longer, to the point where this term is no longer sufficient to cover two generations."

EC Directive, Recital (5).

There has been a similar increase in life expectancy in the United States since the duration provisions of the 1976 Act were proposed in the early 1960s, and enacted in 1976. The life expectancy in 1964 was "somewhat over 70 years"<sup>13</sup>; in 1976, 72.9 years<sup>14</sup>; in 1990, 75.4 years<sup>15</sup>; and projected for 1995, 76.3 years<sup>16</sup>. Thus, from 1964 to 1995, United States life expectancy increased by about six years. When we multiply that increase by three, to account for the author and the intended two generations of beneficiaries, a twenty year term extension is clearly warranted.

But the argument is even stronger, for the relation of life expectancy to copyright term should not be made by comparing the life-plus-50-years term and life expectancy in 1976 or 1964 with a life-plus-70-years term

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<sup>13</sup> Hearings Before Subcomm. 3 of the House of Reps. Comm. on the Judiciary, 89th Cong., 1st Sess., 32 (1965) (statement of George D. Cary, Deputy Register of Copyrights).

<sup>14</sup> Statistical Abstract of the United States 1992, at 76 (Dept. of Commerce).

<sup>15</sup> Id.

<sup>16</sup> Id.

and life expectancy in 1990 or 1995. Rather, we must realize that life-plus-50-years was the international norm at the beginning of this century. Thus, the increase in life expectancy over the 20th Century (from about 52 years in 1909-1911<sup>17</sup> to about 76 years now) should be reflected in an increase from the international life-plus-50-years term at the beginning of the century to a life-plus-70-years term now.

### 3. Works Now Have Greater Value For Longer Periods

Modern technologies have increased the value of copyrighted works over longer periods of time. Indeed, early in the discussions of the first Copyright Office report on revision, term extension was advocated because new media made older works more exploitable. Panel Discussion and Comments on the 1961 Report, 86 (1963).

It was repeatedly noted that the value of "serious" works was often not fully recognized until well into the copyright term. Hearings Before Subcomm. 3 of the House of Reps. Comm. on the Judiciary, 89th Cong., 1st Sess. 82 (1965) (statement of Rex Stout for the Author's League of America); 122 Cong. Rec. 3834 (1976) (statement of Sen. Hugh Scott: "[a] short term is particularly discriminatory against serious works of music, literature,

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<sup>17</sup> Historical Statistics of the United States, Part 1, at 56. (Dept. of Commerce, 1976). The figure is an average of those given for white males and females.

and art, whose value may not be recognized until after many years," referring to works of F. Scott Fitzgerald, Theodore Dreiser and Sinclair Lewis); 122 Cong. Rec. 31981 (1976) (statement of Cong. Hutchinson).

Similarly, term extension has a positive effect by guaranteeing a greater return on investment and thus encouraging investment by publishers and others. 113 Cong. Rec. 8501-02 (1967) (statement of Cong. Poff); 122 Cong. Rec. 31981 (1976) (statement of Cong. Hutchinson).

All these points have equal, if not greater, validity today: The march of technology has created new ways of using copyrighted works. These new media have a voracious appetite for creative works, old and new alike. Creators and copyright owners should benefit from these new opportunities.

#### 4. Increased Copyright Protection is in the Public Interest

The Constitutional purpose of copyright is to promote the progress of science and useful arts. The means of doing so is by granting exclusive economic rights to creators and copyright owners. The better those incentives, the more creativity, the greater the progress in science and useful arts, and the more the public interest is served.

V. ALL UNITED STATES COPYRIGHT TERMS  
SHOULD BE EXTENDED BY 20 YEARS

To take advantage of this golden opportunity for America's creators and copyright owners, America's economy, and America's culture, we urge that all United States copyright terms be extended by 20 years. At the outset, we must note that, for purposes of determining copyright duration, the 1976 Copyright Act generally divides works into two categories:

The first are those works copyrighted or published before January 1, 1978 ("old law works"). Copyright duration for these works still exists for an initial term of 28 years and a (now automatic) renewal term of 47 years, for a total of 75 years. 17 U.S.C. §§ 304(a) and (b). In discussions during consideration of the 1976 Act, the life-plus-50-years term was thought to average about 75 years, thus drawing an equivalence between a life-plus-50-years term and a fixed 75 year term. Hearings Before Subcomm. 3 of the House of Reps. Comm. on the Judiciary, 89th Cong., 1st Sess. 32 (1965) (statement of George D. Cary, Deputy Register of Copyrights). Similarly, a 95 year term would approximate the average life-plus-70-years term. We therefore urge a term extension for these works of 20 years, to a total of 95 years.<sup>18</sup>

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<sup>18</sup> Although this would be an approximate, rather than exact, harmonization of our copyright term for old law works with a life-plus-70-years term, it would adequately serve the purpose of international harmonization, just as

The second category under our current law includes works created or copyrighted on or after January 1, 1978 ("new law works"). The basic term for new law works is the life of the author (or longest surviving joint author) plus 50 years. 17 U.S.C. §§ 302(a) and (b). This term should be extended to life-plus-70-years.

Alternative terms also exist for new law works for which no "life" may be determined -- anonymous and pseudonymous works, and works made for hire. Those works now endure for a term of 75 years from publication or 100 years from creation, whichever expires first. 17 U.S.C. §302(c). These terms, too, should be extended by 20 years.<sup>19</sup>

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the extension of the 56 year term for old law works to a 75 year term did in the 1976 Act. To change the terms of all old law works to life-plus-70-years would seriously upset settled business relations and expectations. The adequacy of this sort of approximation is further shown by its success in allowing us to join Berne in 1989, notwithstanding Berne's required term of life-plus-50-years.

<sup>19</sup> As previously noted, the EC Directive sets a term of 70 years from public dissemination for anonymous and pseudonymous works. EC Directive, Art. 1.3. Our term for such works is now longer than that, by at least five years. Nevertheless, United States law has not and does not discriminate against different categories of works by giving them shorter terms, and we should not start doing so now.

Similarly, the EC Directive contains a complex provision for determining on whose "life" the term of copyright in audiovisual works should be based, and who owns those copyrights. EC Directive, Art. 2. These provisions have no basis in existing American law. Maintaining our law on these points while harmonizing copyright term for these works will accomplish our goals.

Finally, certain other provisions of the law relating to copyright duration will require modification to extend terms appropriately, such as § 301(c) (granting continued state protection against record piracy of pre-February 28, 1972 sound recordings); and § 303 (granting minimum 25 and 50 year terms for works which were unpublished on January 1, 1978, when the 1976 Act took effect).

VI. WHILE CONGRESS CONSIDERS PERMANENT TERM EXTENSION, IT SHOULD ENACT AN INTERIM TERM EXTENSION

In 1962, Congress believed that it was on the verge of enacting comprehensive copyright revision legislation. That legislation, Congress knew, would include copyright term extension. Congress thought that it would be unfair to allow copyrights in existing older works to expire while awaiting enactment of the new legislation. Accordingly, it extended the term of copyrights about to expire.<sup>20</sup>

The same logic applies here. Otherwise, copyrights in some very significant works will expire in 1993 and 1994. For musical works alone, these include:

AFTER YOU'VE GONE  
I'M ALWAYS CHASING RAINBOWS  
K-K-K-KATY

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<sup>20</sup> Pub. L. 87-668, 76 Stat. 555 (Sept. 19, 1962) (extension until Dec. 31, 1965). As we know, other issues kept the general revision bill from passage until 1976. Eight more interim extensions were necessary and were legislated.

OH! HOW I HATE TO GET UP IN THE MORNING  
ROCK-A-BYE YOUR BABY WITH A DIXIE MELODY  
SOMEBODY STOLE MY GAL  
A PRETTY GIRL IS LIKE A MELODY  
DARDANELLA  
SWANEE  
THE WORLD IS WAITING FOR THE SUNRISE

We believe Congress will enact term extension legislation promptly. In the interim, we believe the terms of copyrights which would otherwise expire this year should be extended through December 31, 1994.

#### VII. CONCLUSION

As we have seen, there are many good reasons for a 20 year copyright term extension and, we believe, none against. We urge the Copyright Office to recommend legislation which would extend the terms of all copyrights by 20 years, in harmony with the EC directive and in the interests of the United States and our authors and copyright owners.

Respectfully submitted,

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Dated: September 22, 1993

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Comment Letter

RM 93-8

No. 4

In the Matter of :  
DURATION OF COPYRIGHT : Docket No. RM 93-8  
TERM OF PROTECTION :

Comments of the  
International Confederation of Music Publishers

The International Confederation of Music Publishers ("ICMP") hereby submits its comments in response of the Copyright Office's Notice of Public Hearing and Notice of Inquiry regarding extension of the term of copyright protection under United States Law.

ICMP is an international group that represents the interests of the music publishing business in promoting adequate and effective protection of musical works throughout the world and in strengthening copyright protection on an international scale. ICMP's membership comprises national music publisher organizations from Western Europe and throughout the world.

ICMP contributes its views on legislative and public policy initiatives affecting music publishers and composers at the level of national governments (where the ICMP supports the efforts of its members), and in multilateral fora. The extension of the duration of copyright is, in our view, among the most pressing

copyright issues confronting the creative and music publishing communities today.

The attention of the United States Copyright Office to the extension of the term of copyright protection under U.S. law coincides with initiatives already underway in the European Community ("EC" or "Community") and before the World Intellectual Property Organization ("WIPO"). In comments submitted to the EC Commission regarding a proposed directive on harmonizing the term of copyright protection within the Community and in remarks at meetings of a WIPO Committee of Experts considering a possible Protocol to the Berne Convention for the Protection of Literary and ~~Artistic~~ Works ("Berne"), the ICMP has expressed its strong support for extending the duration of copyright to a minimum of 70 years post mortem auctoris ("p.m.a."). We wish to share with the Copyright Office the principal bases for our support.

First, a term of 70 years p.m.a. conforms to the internationally recognized principle that the author and his or her next two generations should benefit from the author's copyright. This was the rationale for the choice of the 50 years p.m.a. minimum term which became a Berne Convention obligation under the 1948 Brussels Act. The dramatic increase in human life expectancy over the past 45 years has diminished the certainty that the

author's children and their children will enjoy the copyright.<sup>1</sup>

Second, it is crucial to provide a long enough term of protection to allow a reasonable return on the publication or creation of works. Such efforts often demand a substantial investment without the prospect of an immediate return, and this is particularly so in the case of publishing of contemporary classical or so-called "serious" musical works.

Investment in contemporary serious music is extremely risky, involving, in addition to the considerable costs of getting the work into print,<sup>2</sup> the substantial ongoing costs of promotion, distribution and maintenance of the work in the publisher's catalogue. It is rare for such a work to have any financial success until many years after its publication. For example, the "Quatuor à Cordes" of Claude Debussy, published in 1894, was only amortized in 1920, despite having achieved the status of one of the leading "hits" of its day in popular music terms.

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<sup>1</sup> Questions Concerning a Possible Protocol to the Berne Convention: Memorandum Prepared by the International Bureau, World Intellectual Property Organization, BCP/CE/III/2-II, Part II at 26 (June 1993).

<sup>2</sup> In Europe today, ICMP estimates that it would cost a minimum of 90,000 European Currency Units ("Ecus") (US\$106,200) to print an opera, 20,000 Ecus (US\$23,600) to print a symphonic work, and 6,000 Ecus (US\$7,100) to print a work for a small orchestra.

And third, at the same time costs related to music publishing are increasing, other factors affecting the industry, such as reprography, are decreasing publishers' traditional income base. Factors increasing costs and decreasing income lengthen the period of time required to amortize the initial publishing investment.

The special factors that come to bear in music publishing have led at least one nation -- France -- to adopt a longer term for musical works than for other subject matters protected under its copyright law.<sup>3</sup>

Beyond these points, we wish also to note that ICMP endorses the application of the Berne Convention's general rule of national treatment to the duration of protection of works of Berne nationals. We believe resort by any nation (or group of nations) to protection on reciprocal terms represents a step backward for the international copyright community.

In comments before the EC Commission in connection with the proposed directive to harmonize the duration of copyright within the Community, ICMP recommended not only that the Community move to harmonized term at 70 years p.m.a., but also that it maintain Europe's leadership in the international copyright community by advocating an

---

<sup>3</sup> Among EC member states, Germany has a general 70 p.m.a. term, and Greece established a 70 year term in its new copyright law, which went into effect on March 4, 1993. Spain has a term of 60 years p.m.a.

increase in the minimum term to 70 years p.m.a. in the context of the Berne Protocol discussions. We respectfully submit these same recommendations to U.S. policy makers.

By its adherence to the Berne Convention, the United States assumed its proper role in the international copyright arena. It would indeed be unfortunate -- for U.S. creators and copyright owners as well as for their international allies -- if the U.S. were to forego leadership on this important issue and follow rather than forge international consensus.

ICMP thanks the Copyright Office for the opportunity to offer these comments.

Respectfully submitted,

  
Arnold Broido /sm  
President  
ICMP  
53, avenue Montaigne  
75008 Paris  
France

Dated: September 27, 1993

**DAVID PIERCE****P.O. BOX 2748 LAUREL, MD 20708**

September 28, 1993

**GENERAL COUNSEL  
OF COPYRIGHT**VIA FAX (202) 707-6366  
AND FIRST CLASS MAIL

SEP 28 1993

**RECEIVED**

Ms. Dorothy Schrader  
General Counsel  
U.S. Copyright Office  
James Madison Memorial Building  
Room 407  
First and Independence Avenue, S.E.  
Washington, D.C. 20559

Comment Letter
RM 93-8
No. 5

Re: Duration of Copyright Term Of Protection (Docket No. RM 93-8)

Dear Ms. Schrader:

I very much appreciate the telephone call I received yesterday from Marilyn Kretsinger of your office, advising me of the hearing scheduled for September 29. I further appreciate her taking the time and trouble to fax me a copy of the notice that appeared in the Federal Register on July 30, 1993.

I had not previously seen the notice, and was totally unaware of the hearing scheduled for tomorrow. Unfortunately, it was insufficient notice for me to be able to attend or testify.

Upon reading the notice, it appears that the report being prepared by the Copyright Office is confined to possible extension of the copyright term for works copyrighted in the name(s) of one or more individuals -- the current "life plus 50" -- as against a possible "life plus 70."

The notice does not indicate that the Copyright Office is considering a possible extension of the current 75-year term for "works made for hire." Indeed, the current 75-year term for such works in the U.S. is already longer than the proposed 70-year term for such works in the European Community.

However, if it appears from the September 29 hearing and from subsequent developments that you will be considering possible extension of the current U.S. term for "works made for hire," then a further public notice clearly so stating is obviously required, and public hearings must obviously be held in connection with any such notice. I hereby request that I be notified in the event of such notice and hearings. I and others reserve the right to appear at any such hearing and to file written comments in connection therewith (in all cases, either individually or as part of a group).

Nothing in this letter should be interpreted to mean that I have no concern about possible extension of the term for works copyrighted in the name(s) of individuals. I am very much concerned about this issue, and will file written comments relating thereto within thirty days after the September 29 hearing, as specified in the notice. I oppose this change as not being in the best interests of the general public, and will articulate my arguments in my written submission.

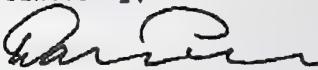
As you may know, I joined in the statement dated February 12, 1993, which The Committee for Film Preservation and Public Access filed with The National Film Preservation Board of the Library of Congress, and also filed an individual statement of my own in that proceeding.

Given the short amount of time available, I have not been able to bring this matter to the attention of the full Committee for Film Preservation and Public Access. However, I have discussed the matter with Gregory Luce of the Committee, who has authorized me to say that he joins in this letter. I stress that both Mr. Luce and myself are herewith conveying our individual views.

Although this letter may be somewhat "out of time" considering the deadline for written comments specified in the July 30, 1993 notice, I would nevertheless appreciate it if this letter could be included as part of the record in Docket No. RM 93-8. In that connection, I am mailing 10 copies of this letter to the address specified in the notice.

Thank you for your time and attention.

Sincerely,



David Pierce

cc (10 copies): Copyright Office  
Department 100  
Washington, DC 10540

cc: Gregory Luce

# The Songwriters Guild of America

276 Fifth Avenue, New York, N.Y. 10001-4509 (212) 686-6820, Fax (212) 481-3680



George David Weiss  
President

September 22, 1993

GENERAL COUNSEL  
U.S. Copyright Office

SEP 28 1993

Comment Letter

RM 93-8

No. 6

BY HAND

**RECEIVED**

Dorothy Schrader, Esq.  
General Counsel  
U.S. Copyright Office  
Room 407  
James Madison Memorial Building  
First and Independence Ave., S.E.  
Washington, DC 20559

Dear Ms. Schrader:

This letter addresses your request for comments relating to proposals to amend the 1976 Copyright Act, by expanding the duration of protection to Life plus 70 years. Being aware of statements filed by The National Music Publishers Association and the Coalition of Creators and Copyright Owners, I thought it best to focus on those core issues which are singular to the songwriting community, of which I have been an active member for my entire life.

I believe I stand in a unique position, having served as President of the Songwriters Guild of America (SGA), America's largest and most prestigious organization, for over 11 years and one whose entire life has been exclusively devoted to the profession of songwriting. I am pleased to say that my colleagues in SGA comprise the most illustrious writers of music and lyrics in the world. Furthermore, I am justly proud of my chosen profession. I recognize that I, along with the Guild's almost 5000 members, have formed a unique community in the arts, which has seen our creativity flourish not only in America, but throughout Europe and the Far East.

*serving the American songwriter for over 60 years*

NEW YORK

LOS ANGELES

NASHVILLE

September 22, 1993

As president of the Guild I realize the shared burdens imposed upon me. Those burdens are particularly onerous when responding to the needs of our estate members, who are the inheritors of the genius of their spouse; and it is particularly on their behalf that I address this letter -- seeking to encourage Congress to extend the duration of post-1978 copyrights by 20 years and extending the duration of pre-1978 copyrights from 75 to 95 years.

To discuss copyright duration as a yardstick of protection, as if each year represented a cache of annual income to the creator, is both misleading and disingenuous. A copyright is only meaningful if the work to which it is attached generates income for the composer and lyricist. And that is the story that I would like to relate. While my story may be personal, it is far from unique. Indeed, it is a paradigm of the stories of innumerable of our members -- names though unfamiliar to the general public whose songs are on the lips of all who cherish our works.

Some 26 years ago I wrote a song entitled "What a Wonderful World" originally recorded by Louis Armstrong and published in 1967. This song was never -- for over 18 years -- a major or even recognizable hit in America. It never reached the charts of Hit Records; it did not enter the Hall of Hits licensed by my performing rights society; it was not used in any television or motion picture. However, it was one of my most cherished copyrights because I so idolized Louis Armstrong by whom I was commissioned to write this song. I nevertheless hoped that one day it would receive the public recognition that it so rightly deserved.

And -- 6 years ago -- Robin Williams starred in a major motion picture, "Good Morning, Vietnam". As a juxtaposition to the devastation depicted by the movie's screenplay, "What a Wonderful World" is sung by Louis Armstrong, thereby creating the counterpoint to the movie's theme. And the song -- after 18 years -- finally became a recognized hit both in the recording world; as a major motion picture theme; and in my performing rights society.

Twenty years ago, when testifying before the House Joint Committee urging enactment of the legislation which eventually resulted in the 1976 Copyright law, Eubie Blake, then in his 90's, delivered an urgent plea for extension of the copyright term, since his most famous song, "I'm Just Wild About Harry" was on the edge of entering the public domain,

September 22, 1993

thus jeopardizing a major source of his income. "I'm Just Wild About Harry" is another example of the typical nadir and zenith of a song's popularity. A hit when originally recorded, "I'm Just Wild About Harry" thereafter sunk into relative obscurity, but had its peaks every 10 or 15 years. Those peaks garnered Eubie sufficient income to enable him to maintain a modicum of decent living. (Perhaps unknown to most legislators is the fact that in his later life Eubie sustained himself not by his copyrights (most of which had entered the public domain) but by his performances on television.)

And there is another sound reason for this extension. There are innumerable composers whose works never reach their pinnacle of public recognition until after their death. I cite Herman Hupfeld ("As Time Goes By"), Vincent Youmans, Charles Ives as leading examples. Whether it is because their music is avant-garde -- or out of synch with the current mode -- they toil in obscurity for most of their creative days. And suddenly, after their death, public recognition and financial rewards abound. Too late for the creator, but just in time to nourish their heirs. But is it fair to now penalize the heirs by shorter duration of protection? What was lost to the creator should not be also lost to his/her heirs. Recognition of these facts further warrants an extended term whose purpose is not to reward the creator so much as giving financial security to his/her heirs.

And when a copyright enters the public domain, there are no gainers; only losers. As I have previously testified before Congress, the marketplace, be it for books, records, movies, or any of the other performing arts, does not pass on to the public any savings supposedly achieved by using or adapting a public domain work. Theoretically use of a public domain song, book, drama or work or art should result in a diminution of the price paid by the general public. But ask yourself: Is any book, movie or recording sold to the public at a reduced price because its subject matter has entered the public domain? Name one! Only the creator loses.

It is to give the creator -- and more importantly the creator's heirs -- the opportunity to benefit from those ten to fifteen year highs that accompany these ten to fifteen year lows that we seek to encourage the enactment of Life + 70 (plus the additional 20 years to be added to the pre-existing 1978 copyrights).

Dorothy Schrader, Esq.

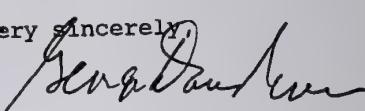
- 4 -

September 22, 1993

Approximately 3 years ago, Senator Christopher Dodd considered the introduction of a bill to give perpetual life to copyrights, with the real "public" -- (i.e. the Arts and Humanities) receiving the revenue at the end of the existing term of copyright. Senator Dodd implicitly recognized that the public domain carries no economic benefit to the public -- only the user, who pockets the savings from the public domain work, is the gainer. (I need only cite the enclosed column from the August 21, 1993 edition of Billboard to prove my point.) Senator Dodd believed that for the public to benefit copyrights should endure, filling the coffers of agencies dedicated to subsidizing the public weal. We believe the theory behind Senator Dodd's proposed legislation is consistent with our efforts to reward the heirs of creators by giving them a prolonged span of years which is wholly consistent with the raison d'etre of the 1976 Copyright Act.

I thank you for the opportunity of expressing the views of the Songwriters Guild of America.

- Very sincerely,

  
George David Weiss,  
President

**P**D OR NOT PD: Oldline music publishers know too well that when a copyright finishes its 75th year, it enters the public domain—another way of saying it's no longer a money-earner in the form in which it was published. Now the whole world can know via a new monthly periodical, "Public Domain Report," which begins publishing monthly out of Washington, D.C., in August. Its editor in chief is entertainment attorney and former record producer E. Scott Johnson. Monthly departments include music, literature, theater, art, and children's works. Many have been chosen to serve on PDR's advisory board, including William Krasilovsky, co-author of the classic *Billboard Books* industry tome, "This Business Of Music," and recording artist Leon Redbone.

BILLBOARD AUGUST 21, 1993

IRELL & MANELLA  
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1800 AVENUE OF THE STARS, SUITE 900  
LOS ANGELES, CALIFORNIA 90067-4276  
TELEPHONE (310) 277-1010

840 NEWPORT CENTER DRIVE, SUITE 500  
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WRITER'S DIRECT DIAL NUMBER

(310) 203-7079

September 23, 1993

FEDERAL COUNSEL  
OF COPYRIGHT

SEP 28 1993

RECEIVED

Comment Letter

RM 93-8\*

No. 7

VIA FEDERAL EXPRESS

Dorothy Schrader, Esq.  
General Counsel  
Copyright Office  
Library of Congress  
Washington, D.C. 20540

Re: Notice of Inquiry Concerning Duration of Copyright  
Term of Protection

Dear Dorothy:

With respect to your meeting scheduled for September 29, 1993 at 10:00 a.m., I would like to offer my support for extending the term of U.S. copyright to comport with the European Community draft directive. My reasoning is set forth in the attached article.

I would like to note further that the article proposes four changes to U.S. copyright law duration, of which the fourth has already been implemented via the Copyright Renewal Act of 1992. I continue to urge the first three proposals (see page 237 of my article) in conjunction with a potential extension of copyright duration.

With kind regards.

Sincerely yours,



David Nimmer

DN:der

Enclosure: Copies of "Nation, Duration, Violation,  
Harmonization: An International Copyright  
Proposal for the United States, 55 Law and  
Contemporary Problems 211 (1992)

INTERIM COMMISSION  
FOR SOCIETY

3FD 28 1992

RECEIVED

Comment Letter

RM 93-8

No. 7

NATION, DURATION, VIOLATION, HARMONIZATION: AN  
INTERNATIONAL COPYRIGHT PROPOSAL FOR THE  
UNITED STATES

DAVID NIMMER

Reprinted from

Law and Contemporary Problems

Volume 55, Spring 1992, Number 2

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# LAW AND CONTEMPORARY PROBLEMS

DURHAM, NORTH CAROLINA

SPRING 1992

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# NATION, DURATION, VIOLATION, HARMONIZATION: AN INTERNATIONAL COPYRIGHT PROPOSAL FOR THE UNITED STATES

DAVID NIMMER\*

## I

### INTRODUCTION

For most of its two centuries, the United States has been a copyright island, its jurisprudence having evolved in isolation from developments elsewhere. As long as it served American interests, U.S. copyright law did not concern itself with the waves that our statutes or rulings would set in motion outside our borders, and few ripples from abroad affected U.S. copyrights. In 1955, however, the international tide began to lap against U.S. copyright shores. In 1976, Congress acknowledged what had by then become the crash of foreign waves, amending parts of the Copyright Act to reflect international standards. Finally, in 1989, the floodgates opened to a massive effort to bring the United States into the world copyright fold and to amend U.S. law for compatibility with that purpose.

Fully three years after this 1989 effort, the integration is still not complete, however. Certain backwaters exist in U.S. copyright law, as yet untouched by the standards observed throughout the rest of the world. And a perilous undertow threatens the subsistence of copyrights in various U.S. works abroad and various foreign works inside the United States. This article addresses those lingering anomalies.

The structure of this article is as follows: Part II summarizes the historical background during which the United States progressed from a copyright piracy haven to the foremost exporter of intellectual property. Part III begins the discussion of copyright duration, which is the focus of the article, and compares the durational schemes provided under U.S. law and the Berne Convention. Part IV discusses conflicts between those schemes, which give rise to the argument that the United States is in violation of its treaty obligations. Part V offers a legislative proposal concerning U.S. copyright

---

Copyright © 1992 by David Nimmer

\* Of counsel, Irell & Manella, Los Angeles, California.

Portions of the introductory material set forth below has previously appeared in Melville Nimmer & David Nimmer, *Nimmer on Copyright* (Bender, 1991) ("Nimmer on Copyright").

# KIT★PARKER★FILMS

BOX 16022 • MONTEREY, CA 93942-0022 • TELEPHONE 408-393-0003 / FAX 408-393-0004

Comment Letter

October 19, 1993

FAX -- PAGE 1 OF 1

RM 93-8

Dorothy Schrader, General Counsel  
Dept. 100  
Copyright Office, Library of Congress  
Washington DC 20540

GENERAL COUNSEL  
U.S. LIBRARY OF CONGRESS

No. 8

OCT 19 1993

Re: RM 93-8 (Proposed extension of copyright)

RECEIVED

Dear Ms. Schrader:

It is my understanding there is current consideration being given to the idea of retroactive rejuvenation of copyright protection to works both individually and collectively produced. The result, if approved, would be to suddenly, sweep away all "public domain" status of countless works. The ostensible motive of such an action is to "insure economic fair benefits (for creators and their dependents)."

While such a motive is meritorious in its sentiment, the act of trying to implement it in the fashion being considered would create a debacle of unimaginable proportions. Clearly some artists and some survivors of artists whose works have been in the public domain for decades would be benefitted.

But even more surely, mass confusion and litigious reactions would develop in connection with the many thousands of artistic works which have long since lost their copyright protection. Suddenly producers would be threatened who have been incorporating into current works both ideas and bits and pieces of such things as movies and songs from the distant past. They would fear retaliation from newly defined "owners" and in countless instances they would have no way to determine whom to approach in an effort to secure use permission. In short CHAOS would be created.

We urge rejection of retroactive rejuvenation of copyright protection for works that have been in the public domain and appreciate your consideration of these observations and ideas.

Sincerely,  
KIT PARKER FILMS

  
Kit Parker, President

# SOMETHING WEIRD VIDEO



S.W.V. Dept WOW P.O. Box 33664 SEATTLE WA 98133

## FAX COVER SHEET

DATE: 10.20.93TO: DOROTHY SCHRADER  
FROM: SOMETHING WEIRD VIDEOCOMMENTS: SEE ATTACHEDOPPOSE PROPOSALDOCKET # RM 93-8OUR FAX (206) 364-7526NUMBER OF PAGES: 2 (INCLUDING THIS FORM)

206 364-7526

10-20-93 03:08PM POOL #06

Comment Letter
RM 93-8
No. 9

GENERAL CONCERN  
OF COUNSEL

OCT 20 1993

RECEIVED

# SOMETHING WEIRD VIDEO INC.



DEAR Ms. Schrader:

Re: Docket No. RM 93-8

S.W.V. Dept WOW P.O. Box 33664 Seattle WA 98133

Comment Letter

October 19, 1993

RM 93-8-4

No. 9

Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100, Washington, DC 20540

GENERAL COUNSEL  
US GOVERNMENT

OCT 20 1993

## RECEIVED

We at Something Weird Video, Inc., strenuously oppose the "Proposal For Copyright Extension" for works for hire from 75 years to 95 years. We also oppose any attempts to revive the copyrights of films that are already in the public domain. This proposal SHOULD NOT be introduced in Congress.

### Reasons:

- US Copyright is not compatible with the European proposal
- This is contrary to the purpose of copyright outlined in the US Constitution
- There is no benefit to the public, only to a handful of large companies
- These companies themselves nearly lost much of our film heritage, then donated the "remains" to film archives
- Archives have preserved the studio-owned titles with FEDERAL FUNDS yet the films are still unavailable
- The films are of educational and historical significance
- Public Domain is a repository of material used to create new works such as documentaries and educational films

Please note our position is that supported by no less than the US Constitution "to promote the progress of science and useful arts by securing for LIMITED TIMES to authors and inventors the exclusive right to their respective writings and discoveries" (emphasis added). We feel that 95 years is an excessive amount of time and does not qualify as "limited".

Sincerely,

*Mike Vraney, Tammy Vraney, Dan Taylor, Teresa Sullivan, Peter Stevens,  
Greg Carriere*

The Staff at Something Weird Video  
(206) 361-3759

Dorothy Schrader  
General Counsel  
Copyright Office  
Library of Congress  
Department 100  
Washington, DC 20540

Bret Wood  
2493 Williams Lane #6  
Decatur, GA 30033  
(404) 712-9560 phone [REDACTED]  
[REDACTED]

October 14, 1993

Comment Letter

RM 93-8

No. 10

RECEIVED

Dear Ms. Schrader,

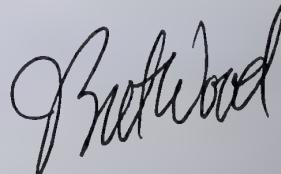
I am writing in regards to Docket No. RM 93-8, the proposal to extend motion picture copyright term twenty additional years.

I have written two books and numerous articles on film history, most of which would not have been possible if proponents of absolute copyright protection had their way. In my view, this proposal would serve only to impede the study and appreciation of America's cinematic heritage, erecting a stumbling block to the academicians (both cinematic and historic) and enthusiasts who promote greater widespread awareness of the early cinema as well as more recent independent productions which have fallen into the public domain.

If motion picture studios want to preserve the early cinema, let them start paying for print restoration and storage...crucial duties that are being performed by independent and government-supported archives – archives whose very existence hinges on the fair usage of public domain motion picture footage. If the studios were doing their share of preservation, perhaps the issue might warrant discussion. But they aren't and so it does't.

When I corresponded by telephone and fax with two major studios recently (Turner/MGM and MCA/Universal) regarding publication rights to several of their screenplays, I spent a number of weeks being routed around to various corporate offices and divisions trying to prove to them that they controlled the copyrights on these particular scenarios. When I programmed a series of copyrighted silent films last month for an upcoming film festival at a non-profit arts center, a number of prints had to come from independent archives since the studio had failed to maintain their print materials (other titles had to be cancelled because the studio prints were in too poor shape to be circulated). If copyrighted films are being handled this irresponsibly, imagine what the case will be with films made decades earlier. Furthermore, I am almost positive that no studio has ever given a major theatrical re-release or video release of any film made prior to 1918. So what's the point?

When RM 93-8 comes up for consideration, please take into consideration the good things that are being done by the various archives and businesses that care about the cinema and who are making its early masterworks widely available to the public. It is too valuable a body of work to let disintegrate within the closed vaults of those who consider it unworthy for the public's eyes to see and therefore undeserving of preservation and circulation.



# FAIRNESS IN COPYRIGHT COALITION

P.O. Box 438

Orland Park, IL 60462

708-460-9082 FAX: 708-460-9099 press \*

Ms. Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100  
Washington, DC 20540

GENERAL COUNSEL  
OF COPYRIGHT

NOV 30 1993

11-26-93

Comment Letter

RM 93-84

No. 11

RECEIVED

RE: Docket No. RM 93-8

The Fairness in Copyright Coalition is a coalition of businesses, historians, educators, distributors, archives, and authors who are involved in and use the copyright laws of the United States in their daily lives and business dealings.

The study and hearings by the Library of Congress are to make a recommendation for or against the extension of copyright for authors to life plus 70 years and works for hire to 95 years. We oppose this extension for the following reasons.

We believe the first concern of the extension is its validity in respect to copyright law as stated constitutionally.

Copyright law in the United States is constitutional law, making our requirements for copyright different from changes within the European community. James Madison is given credit for the copyright clause in the constitution, a man with amazing foresight. Article 1, Section 8 of our United States Constitution reads: "The Congress shall have the power...to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

Therefore, this language manifests three policies of copyright the Library of Congress must consider in it's recommendations.

1. The promotion of learning
2. The preservation of the public domain
3. the protection of the author

These three policies form the delicate balance of copyright in the United States. There are factions who would consider only selected policies to benefit their interests. However, any changes should and must adhere to the three policies to

be fair copyright law. Because of this structure of copyright, Intellectual Property and creativity has flourished in the United States.

We must look at the extension of copyright in the context of how it affects the public in the United States, working within the framework of the constitution.

Copyright law was created, and should be fostered as, granting authors specific rights to promote the **public good**. We would not say authors are granted copyrights for their own good. This would be counterproductive, if not simply a monopoly to control properties.

**Does the extension help the promotion of learning?** We do not feel any of the oral or written testimony has indicated this. The Coalition of Creators and Copyright Owners written testimony contains so little about the public good or public interest we were hard pressed to find any referral in the 25 page document. They did say:

"The constitutional purpose of copyright is to promote the progress of science and useful arts. The means of doing so is by granting exclusive economic rights to the creators and copyright owners. The better those incentives, the more creativity, the greater the progress in science and useful arts, and the more the public interest is served."

The assumption in this statement is a longer term will be the incentive for creativity. We feel this statement is made without proof. Logic dictates an author creating a work, whether a book, motion picture, or whatever would not stop the creation, or create with less zeal, if the extension is not granted. Would not a shorter copyright term cause authors to create more? Wouldn't they work harder? If copyrights were 15 years total, would not authors create more since the term is shorter? It seems both arguments are rather far fetched. All the extension does is postpone the public domain, while the authors receive monetary payments from the public for a longer period. Those for the extension are speaking of OLD authors, those works already copyrighted. We are concerned with NEW authors, NEW creativity, and the promotion of learning. New authors need a rich and diverse public domain to create and educate.

**Does the extension help the preservation of the public domain?** The public domain will not be preserved with the extension. The constitutional concept of copyright is the author receives a monopoly granted for a limited term, but the trade off is once the protection ceases there is free access by the public. The preservation of the public domain complements the promotion of learning. The extension would hinder the creation of new works, for the extension will create a constriction of the public domain. The Public Domain contains the building blocks for new authors. Creation can only be hindered through the extension.

12

**Does the extension help the protection of the author?** Any extension would protect the author. However, we must consider the extension in light of the public benefit. The question is the sufficiency of Life plus 50 and 75 years for works for hire. If there is no evidence the increase will foster creativity of new works, and the increase will constrict the public domain where new creators will suffer, then what is the benefit of the extension? The extension will benefit OLD authors, those with copyrights in hand, at the expense of NEW authors, those who will create in the future.

The public will pay more if this copyright extension passes both intellectually and monetarily. To address some of the monetary issues, which in many cases are intertwined with intellectual issues, we can look at new authors attempting to create a work in today's copyright environment.

We discussed with a rising young film maker his attempt to use some music in one of his productions. He heard a march played by a high school band at a weekend outing. He felt the music would fit "perfect" in his film. However, when he tracked down the name of the music and tried to clear it's usage, he discovered the cost for the music use was his entire budget! He utilized a public domain song, and his work was completed. Would it have been better if this work was not completed? Of course not. Could it have been completed without the public domain? No, the public domain was instrumental in it's completion. Filmmakers need a rich public domain. Even the "majors" use public domain, with releases like "Aladdin" or "Little Mermaid." Barney the famous dinosaur uses public domain songs to delight young audiences. Public domain enhances creativity, and creates new works.

The copyright extension will cause more licensing costs for music in all types of productions. We question the public benefit of the extension on these grounds. The extension will help the economic desires of present copyright holders, but who pays for this? The ultimate cost of all licensing, music, scripts, screenplays, and so on ultimately are paid by the consumer in greater costs of the finished products. New creators may be hampered by affordability of licensing, and the public domain is their avenue of creation. The extension would constrict the public domain. The "generous life plus 50" and Works for Hire at 75 years is an adequate reward for the author. The proponents of the extension have not demonstrated the public benefits. The extension would be a windfall for copyright holders. However, it is not at "no cost". It is at the public's expense.

On the issue of Harmonization, we hope the Copyright Office thoroughly studies the effects of the extension domestically. We wonder what proof there is that harmonization with the worldwide term would be beneficial to the United States. Our copyright laws are based in the constitution. The EC does not have this copyright structure to work within, so our changes, and correlation with the EC, should be carefully studied as to the benefits domestically. The life plus 70 **is not** an international standard today. Some countries grant 50 years. Some

countries grant 60 years. Some countries grant 70 years. If we conclude the costs in creativity of NEW works for NEW authors will be diminished through the extension to life plus 70, the influence of the United States should be used to encourage the EC to accept our standard of life plus 50, not change it. Actually, those European countries with longer terms may already be causing diminished creativity for new authors. The results of our **present copyright system** has created a country fostering the most creativity of any country in the world. Those authors using our **present copyright system** have reaped the rewards and now own copyrights. These OLD authors now ask for an extension. It is only fair **new authors** and **future authors** have the same chance to achieve the levels of creativity that their predecessor had through our **present copyright system**. The extension does not allow for this.

Harmonization is not an issue in extending Works for Hire to 95 years. There can be no argument for this extension, except a windfall for the corporate copyright owner. If we work within the framework of the EC, we would seek a **reduction** of Works for Hire to 70 years. Works for Hire should stay at 75 years, for no public benefit has been shown to extend this term. Actually, the public will suffer if works for hire are extended.

A quick look in video stores and businesses selling video tapes shows a huge offering of subjects available. Many of the offerings are public domain films, or works derived from public domain footage. The public domain releases are competitive, and in many cases priced lower than works under copyright. Price is not the only factor. Diversity of offerings is another plus for public domain. There is innovation and creativity in public domain usage, from "Video Birthday Cards" featuring newsreels from one's birth year, to children's tapes showing kids the old, and new, world of railroad engines. Because the public domain market is highly competitive, prices are at their lowest and the public benefits. We have actually found inferior copyrighted product in classic television releases (Death Valley Days Volume #4, IVE Direct Marketing) where in comparison the quality of the public domain TV shows was far superior(Victor Borge Great Comedy Performances. GoodTimes Home Video). Public domain releases are **NOT** in any way inferior to copyrighted product, unless surviving pre-print material is marginal in quality. In many cases, a public domain title may be available only because it is public domain. Where the number sold of some titles are relatively small for larger distributors, a work of historical and/or popular culture/entertainment is made available to the public for viewing by smaller companies not requiring huge profits to release a title.

There are many silent releases public domain distributors are waiting to release. Many of these companies have invested in the preservation of silent films only to have the copyright laws changed "mid stream." If this extension takes place there will be 20 years without public domain releases. Many silent films, due to their limited marketability, will not see the light of day if copyrights are extended. If allowed to fall into the public domain, as they should, the public will benefit with

good quality, reasonably priced videos through public domain distributors. The extension will deprive the public of their cultural and historical motion picture heritage. Large corporations WILL NOT offer these works in the proliferation public domain distributors will. Due to their structure, they are not able to offer tapes unless large profits or large numbers can be attained.

International trade will not suffer if the extensions are denied. The public domain industry works internationally as well as domestically. There are companies working primarily in the public domain, and those who license copyrighted product as well as public domain. These companies may be selling stock images overseas. They may be licensing new works created from public domain images for home or television distribution overseas. The Public Domain Industry innovatively markets images of very little interest to the "majors", and they are continually discovering and preserving works at their expense. The industry is large, and makes significant contributions to our economy by helping the trade deficit, as well as contributing to our tax base and employing American workers. There isn't anything comparable in foreign countries. Diverse offerings are beneficial to the public, and are used in study, entertainment, and the creation of new works. The domestic impact of the extension must be considered.

Within the written and oral testimony there has been a drive or push to give copyright perpetual life (The Songwriters Guild of America). We have addressed in this paper an issue as stated by the Songwriters Guild: "The Public Domain carries no economic benefit to the public." We have given examples about better quality, more diverse offerings, and richness of the public domain for new authors attained through our constitutional copyright law. Those authors holding copyrights used the public domain to create their work. The cost of perpetual copyright to the public both monetarily and creatively would be staggering.

There were arguments for retroactivity by Mr. Sorkin of the MPAA, The Coalition of Copyright Creators, and others. We wish to address this issue. Retroactivity of copyright is constitutionally unsound. NAFTA article 1705.7 was unsound legislation and its constitutionality is questionable. The beginning of this paper states constitutional copyright law as is written in the constitution. Stagnation for NEW authors and authorship is the legacy of retroactivity. Those asking for retroactivity have used the freedom of our copyright system to produce a work and retain a statutory copyright. Now, they do NOT wish to afford NEW creators the same opportunity. They want to keep their monetary rewards flowing...Forever. The limited term clause of our constitution emphatically states we MUST offer in our free society free access to the public domain. We MUST think of the NEW authors. The OLD authors have already made it.

The members of this coalition ask the following conclusions be considered.

**The extension for authors to life plus 70.** We feel we have given sufficient information this would cause a constriction of the public and an adverse effect on

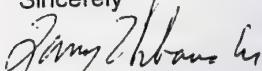
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new authorship. Conversely, it is stated by the Coalition of Creators and Copyright Owners a longer term will be an incentive for new authors. We feel then, if harmonization with the European community is a factor, the recommendation should be FOR the extension for authors to 70 years, but NOT retroactively. Our concern is with NEW authors, and by allowing the change for NEW authorship we are in harmonization while offering a richer public domain and an "easing into" the extension. Although there will be a constriction of the public domain eventually, it will not occur for 30 years. The new authors will have the same chance for creativity through the public domain as those who hold their copyright today. It seems with the extension taking effect in 1993 and NOT retroactively we can agree to the benefits of the extension for authors.

**The extension for works for hire to 95 years.** We maintain there is no valid argument, except a windfall profit for corporate copyright owners, for the extension. Harmonization with the EC for works for hire is less than the current term, 70 years vs. 75 years. Previous legislation (the 1992 Copyright Act) with automatic renewal has caused indirectly a constriction of the public domain through automatic renewal of abandoned works. This extension can only harm new creators and authorship by constricting the public domain further. The costs to the public financially and intellectually have been demonstrated in this paper. Works for hire were just extended in 1976 for 19 years. How often will they ask? We ask the Library of Congress to NOT recommend the extension of works for hire.

We respectfully ask the Library of Congress to re-open the hearings on this issue and to hold studies on the impact of these extensions domestically. There must be a thorough understanding of the effects of these proposed copyright changes. We cannot and must not make these decisions and recommendations without as much input as possible.

Sincerely



Larry Urbanski  
Chairman

cc.

Senator D. DeConcini  
Cong. W. Hughes  
Cong. H. Fawell  
Senator P. Simon  
Senator C. Mosley Braun  
Vice President A. Gore  
President W. Clinton

**FAIRNESS IN COPYRIGHT COALITION**  
 P.O. Box 438  
 Orland Park, IL 60462  
 Phone 708-460-8062      Fax: 708-460-8098

Faxed from David Fawcett M  
 AFIA Conference (Horing Irving  
 This was submitted for AFIA m.  
 Chicago this week.

Rec'd  
 10/21/93

**RE: Extension of Copyright term protection by 20 years and Retrosactivity  
 (restoring copyright protection to public domain works).**

On September 29, 1993 the Library of Congress held hearings to extend the duration of copyright term for authors and works for hire an additional 20 years.

The reason for this extension is to put us on even terms with the European Community (EC). There are inherent problems with this extension for archivists, film makers, and others in the motion picture community that utilize public domain works.

The major push of this legislation is by the music industry. The proposed changes will affect all aspects of film usage, as did the changes in copyright law in 1982.

The extension of copyright for authors will cause additional clearance problems in releasing public domain works. The limited term-provision of the copyright clause in the constitution states the limited monopoly of the author must cease, for copyright rewards the author only to serve the larger public interest. If extensions are continually granted, is this not a perpetual copyright? What will happen when these 20 years are up, another extension?

The EC will adopt in the future a life plus 70 year copyright for authors, and the Library of Congress asks us to accept this extension argument for global equality for authors.

However, WORKS FOR HIRE in the EC are only 70 years total, and there is no intention to extend this term in the EC. The proposal by the Library of Congress is for 95 years, which clearly is more than is required for harmonization with the European Community.

Our concern is the extension of Works for Hire to 95 years benefits only large corporations, and has no public benefit.

**1. Copyright law constitutionally mandates: The promotion of learning...**

This extension will stop the release of thousands of film works. If they are held by copyright they would not be released to the public. In many cases, the major motion picture companies have no desire to release their older works, or works less "significant" in their opinion. They seek the extension to preserve the statutory copyright of "profitable" works, and those not meeting the standard of

GENERAL COUNSEL  
 DR. ROBERTSON

10/22/1993

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Comment Letter

RM 93-8-

No. 11

Copies from MBL 10/21/93 b.

Marilyn Lewin *Face* *1/2*  
 Dorothy Schindler *Ph.D.* *Notes*  
 Marilyn Kretzinger

profit will waste away. The preservation efforts of the motion picture companies in many cases are minimal. The ultimate user, the "public", must have access for the promotion of learning.

**2. Copyright law constitutionally mandates: The preservation of the public domain.**

The copyright holder enjoys a monopoly through copyright law, but ultimately there must be free expression of ideas. The public domain makes sure there is no control of ideas in a free society. Motion pictures, books, and all copyrighted work must ultimately fall into the public domain for they are the public's cultural heritage.

**3. Copyright law constitutionally mandates: The protection of the author.**

Under the copyright clause, congress has the power to determine the terms of the copyright bargain, but it is conditional. The statutory grant to the author is lawfully upheld during its term, only for the work to become the public domain when the copyright term expires.

The House Report on the Berne Convention Implementation Act of 1988 reads in part:

Sound copyright legislation is necessarily subject to other considerations in addition to the fact that a writing be created and that the exclusive right be protected only for a limited term. Congress must weigh the public costs and benefits derived from protecting a particular interest. The constitutional purpose of copyright is to facilitate the flow of ideas and the interests of learning;... (T)he primary objective of our copyright laws is not to reward the author, but rather to secure for the public the benefits from the creations of authors.

We agree with the Committee for a Reasonable Copyright Term in its opposition regarding the extension of works for hire. It is obvious, from the written and oral testimony at the hearings, the ultimate goal of the authors, motion picture companies, and music industry are perpetual copyrights, and the revision of the public domain.

We have some very grave constitutional problems facing us. We ask you to join us in our efforts.

Sincerely

*Larry Urbanek*  
Larry Urbanek  
Coalition for Copyright Fairness

### The Effect on Motion Pictures

The proposal to extend to 95 years the current 75 year term for motion pictures would obviously have its most immediate effect on the decade of films copyrighted from 1918 to 1927. With only a handful of exceptions, these films can be seen only at archives and foreign film festivals. Turner Entertainment and Paramount have released a couple of their major titles, but virtually all the copyrighted survivors of this decade of film history remain on the shelf, unseen in the classroom, video store or on television or cable.

Extending the current term of copyright will guarantee that the public will continue to be deprived of hundreds of films, long ago abandoned by their creators, but still protected by copyright. What opportunity does the general public have to see Frank Borzage's romantic masterpiece LUCKY STAR (1929), recently restored from a print found in Europe; Robert Flaherty's MOANA (1926), filmed on location in Samoa by the great documentarian; the part-Technicolor REDSKIN (1929), a story of the Pueblo Indians adapting to the America of the 1920s; and the legendary original silent film version of PETER PAN (1923), with Betty Bronson personally selected by author James Barrie to play the title role?

Thousands of nearly forgotten American films are awaiting the freedom of public domain. For many more, public domain is meaningless because their makers lost all copies to poor storage and neglect. In fact, a 1993 study by the Library of Congress documents how the vast majority of films from the silent era have been lost forever due to ownership apathy. The scattered survivors were donated to film archives, which preserve, catalog and store them primarily with Federal funds. For many of these films, all that is limiting their availability to the public is expiration of their copyrights.

As proposed, the owners of these copyrights do nothing in return for this extra copyright protection. They assume no obligation to preserve their films, make them available, or even grant permission for archive screenings. Where is the public benefit?

### Coming Next: Everything is Copyrighted -- Forever

If this proposal passes, it will not be the last change. In 1976, the copyright term for movies was extended by 19 years. Now in 1993, it might be extended by another 20 years. It may not even take another 20 years for a proposal to extend the period again. The Songwriters Guild of America encourages the Copyright Office to recommend giving "perpetual life to copyrights."

One of the main goals of the proponents is to revive the copyrights in all works from the Twentieth Century that have fallen into the public domain. The 28-page submission by the Coalition of Creators and Copyright Owners specifically solicits restoration of protection for public domain works. They note that Europe is reviving copyrights as it moves to a common term of 70 years from publication for motion pictures. And, they point out, the North American Free Trade Agreement (NAFTA) includes a requirement that the United States restore the copyrights of Mexican films in the public domain. In addition, it is well known that Columbia University Law School is currently studying how best to achieve revival of the copyrights in films that have already fallen into the public domain. As incredible as it seems, if these proposals were implemented, all films from 1993 to the present would be protected by copyright! The prospect of having to retrospectively clear or eliminate public domain footage from thousands of already produced documentaries and educational films is utterly staggering.

## Summary

The proposed 20 year extension of copyright for works for hire, such as motion pictures, to 95 years will contribute to the near-complete inaccessibility of a large portion of our motion picture heritage. This proposal should not be submitted to Congress. The reasons include:

- U.S. copyright extension is not compatible with the European proposal
- This is contrary to the purpose of copyright outlined in the United States Constitution
- It benefits a handful of large companies, without public benefit
- These are the same companies that allowed so much of our film heritage to be nearly lost in the first place, then denied the survivors to film archives
- Archives have preserved the studio-owned titles with Federal funds, yet the films are still unavailable
- These films are of great educational and historical importance
- Public domain is used to create new works, such as documentaries and educational films

## How You Can Help

Please write a letter opposing the proposal to extend the copyright for works for hire from 75 years to 95 years. Please make it clear that you also oppose any attempts to revive the copyrights of films that are already in the public domain. Comments must be received by the Copyright Office no later than November 29, 1993! Refer to Docket No. RM 93-8. If you can't send a letter, then send a postcard expressing your opinion. You should address your letter to:

Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100, Washington, DC 20540

fax: 202-707-8366

Since this proposal is expected to be introduced in Congress in the next few months, you also should send copies of your letter to the chairmen of the appropriate committees on Capitol Hill. Their addresses are:

Senator Dennis DeConcini, Chairman  
Subcommittee on Patents, Copyrights and Trademarks  
Senate Hart Office Building, Room 327  
Washington, DC 20510-5256

fax: 202-224-2302

Rep. William J. Hughes, Chairman  
Subcommittee on Intellectual Property and Judicial Administration  
Cannon House Office Building, Room 207  
Washington, DC 20515-5219

fax: 202-225-3737

Send copies to each of your Senators and your Representative at:

Senator (name)	Representative (name)
United States Congress	United States Congress
Washington, DC 20510	Washington, DC 20515

And finally, send a copy to us, so we can use your support to convince the Copyright Office and Congress that this proposal should not become law. Send a copy to either address:

David Pierce  
P.O. Box 2748  
Laurel, MD 20709  
fax: 301-604-6827

Greg Luce  
2747 Shannecy Drive  
Medford, OR 97504  
fax: 503-779-8650

## Ad Hoc Committee for a Reasonable Copyright Term

David Pierce, P.O. Box 2745, Laurel, MD 20709  
Greg Luce, 2747 Shannoy Drive, Medford, OR 97501

fax: 301-604-6327  
fax: 503-779-8450

October 8, 1993

Dear Friend of Classic Film:

America's lovers of films and scholars of film history face a crisis and a challenge.

The 75-year copyright term for motion pictures in the United States is already the longest in the world. Nevertheless, the U.S. Copyright Office is expected to propose this fall that Congress extend the copyright term for motion pictures to 95 years, withholding our film heritage for an additional 20 years. This proposed 95-year copyright term would be disastrous for research and enjoyment of classic cinema, ensuring that many movies would be experienced not by the eager audiences they deserve, but ~~secondhand~~ through articles in scholarly journals.

Even worse, the proponents of copyright extension are already preparing for the next step: restoring the copyrights of films that have been in the public domain for up to fifty years. This would include such classics as Douglas Fairbanks' THE MARK OF ZORRO (1920) and Buster Keaton's THE GENERAL (1927). Taken together, term extension and copyright retroactivity would bring Edwin S. Porter's THE GREAT TRAIN ROBBERY (1903) back under copyright protection!

If you love old movies and want them to still be available,  
you need to make your voice heard in Washington — NOW!

### The Proposal For Copyright Extension

Music publishers and songwriters propose extending by 20 years the current U.S. copyright term of the life of the author plus 70 years for works by individuals, such as novels and songs. The stated purpose is to bring the United States "in sync" with the European Community, which has proposed (but not yet adopted) a copyright term for works by individuals of "life plus 70." The proponents of "life plus 70" also propose extending the U.S. term for "works for hire" such as motion pictures, from the current 75 years to 95 years.

However, they fail to note that the current 75-year term for works for hire in the U.S. is already longer than the 70-year term for such works which has been proposed (but not yet adopted) in the European Community. Indeed, the current term for motion pictures in most European countries is 50 years.

At a hearing before the Copyright Office on September 29, only those favoring these extensions testified. The announcement of the hearing in the *Federal Register* only discussed works by individuals, and did not mention the proposed extension to films and other works for hire. We believe that the large corporations recognize that if the proposal to extend the copyright term for works for hire is debated on its merits, it will fail. The media conglomerates are hoping to keep this quiet, so their proposal can simply sail through Congress!

### Summary of the Copyright Extension Proposal

	European Community Proposal (not yet adopted)	Current United States Law	Expected U.S. Copyright Office Proposal
Works by individuals (songs, novels)	Life of the author plus 70 years	Life plus 50	Life plus 70
"Works for hire" (films, magazines, newspapers)	70 years	75 years	95 years*

#### There Is No Justification for Extending

Before talking of extending copyright, it is important to examine the purpose of copyright. The United States Constitution grants Congress the power "to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries" (emphasis added).

The public policy of this country has always been to provide limited protection for a finite term to give creators incentives to create additional works. At the end of the limited term of protection, creative works fall into the public domain for the widest possible dissemination. That is the same philosophy that underlies the 17-year term for patents. Public domain is an integral part of the creative process, and the courts have been consistent in recognizing this: In *Stewart v. Abend*, a landmark 1989 copyright case, the Supreme Court noted that copyright serves a higher purpose than just providing income to authors and creators:

Although dissemination of creative works is a goal of the Copyright Act, the Copyright Act creates a balance between the artist's right to control the work during the term of the copyright protection and the public's need for access to creative works. The copyright term is limited so that the public will not be permanently deprived of the fruits of an artist's labor.

Public domain means that creative works are more widely distributed, and the wide availability of ideas contributes to creativity, benefiting everyone. It is due to the worldwide public domain status of Gaston Leroux's 1910 novel "The Phantom of the Opera" that there are three completely different stage musicals touring the United States. Similarly, the public domain 1909 novel "The Secret Garden" is allowed to inspire both a Broadway musical and a different interpretation for the movie. Frank Capra's IT'S A WONDERFUL LIFE (1946) was only recognized as a classic when the film fell into the public domain and was widely seen for the first time. Educational producers use public domain footage in their films to instruct and entertain. Documentary filmmakers can afford to make films for specialized audiences because they can get public domain material at reasonable prices from sources such as the National Archives. The news programs on CNN, the broadcast networks and C-SPAN constantly use readily available public domain footage to provide historical insight into current issues.



# The S~~e~~lent Film Newsletter

Gene Vazzana, Editor  
140 7th Avenue  
New York NY 10011-1843

GENERAL COUNSEL  
OF COPYRIGHT

OCT 25 1993

October 20, 1993

Ms. Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100  
Washington DC 20540

Comment Letter

RM 93-8

No. 12

RECEIVED

Re: Docket No. RM 93-8

Dear Ms. Schrader:

This letter is to express my concern and displeasure at the attempt to extend the copyright from 75 to 95 years. There is absolutely no public benefit to be derived from such an extension.

I vehemently oppose this proposal and I urge you to halt any further attempts to change the existing copyright law.

Sincerely yours,

*Gene Vazzana*  
Gene Vazzana  
Editor

cc: Senator Dennis DeConcini  
Rep. William J. Hughes

Comment Letter	
RM	93-8
No. 159	

GENERAL COUNSEL  
OF COPYRIGHT

DEC 8 1993

RECEIVED

James J. Cain  
6234 WESTWARD #15  
Houston, TX. 77081

NOV. 20, 1993

Dear Sirs:

I am totally against extending the copyright of movies, music, and books beyond what it is today. Many classic films, songs, and books will not be available to the general public who wish to partake of these media for their personal enjoyment.

Companies such as Siniester Cinema are allowing the public access to many films which can no longer be seen on television or at the theatre. Many of the movies I enjoyed as a child in the '50's + '60's are at best unavailable without the assistance of a few concerned companies such as Siniester. They make these ~~old~~ movies available on video so we baby boomers can relive our youth. I don't believe that we would be able to obtain these films in any other way. Even cable stations, there are only the occasional late night showings, and then it is only the "classics" or "turkeys". What about the rest of the movies?

In closing, then, please do not extend copyright or deny public domain status to works now in the public domain. It would not serve the public interest in any way.

Thank you.  
James J. Cain  
TOMFC T-1

Comment Letter

RMA 93-84

No. 160

Dorothy Schrader  
General Counsel  
Copyright Office  
Library of Congress  
Dept. 100  
Washington, DC 20540

Box 25872  
Honolulu, HI 96825  
November 27, 1993

GENERAL COUNSEL  
OF COPYRIGHT

DEC 8 1993

RECEIVED

Dear Ms. Schrader.

I am opposed to the move to extend the  
copyright for works for hire from 75 years to 95 years.  
Also in opposition to any move to revive the copyright  
of films already in public domain.

I am a writer.

Sincerely,  
*Richard W. O'Donnell*  
Richard W. O'Donnell



MAILING ADDRESS:  
PO BOX 7647  
CHARLOTTE, NC 28241  
SHIPPING ADDRESS:  
2100 CAROLINA PLACE  
FORT MILL, SC 29715

GENERAL COUNSEL  
OF COPYRIGHT

December 1, 1993

DEC 8 1993

Comment Letter

RM 93-8

No. 161

RECEIVED

Ms. Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100  
Washington, DC 20540

Re: Docket No. RM 93-8

Dear Ms. Schrader:

We are sending this letter in conjunction with the efforts of the Ad Hoc Committee for a Reasonable Copyright Term

UAV is a prime manufacturer and distributor of pre-recorded videos to the mass market and direct response situations throughout the U.S. and Canada. We are based in the Southeast just outside of Charlotte, North Carolina. We started our business in 1985 and have grown from a five employee operation in 1985 to just over 200 employees now.

We are in total agreement with the Ad Hoc Committee's opposition to the possibility of taking all Public Domain movies and films off the market. Following are several key points of our own to their already well thought-out position paper.

- 1) The Public Domain movies that currently exist of which there are an estimated 10,000 titles, enabled start-up entrepreneurs to get into the home video business back in 1985, which was a business primarily dominated by the major studio conglomerate corporations. As the business grew with the growth of the VCR universe in American homes, the Public Domain video business allowed many companies access into a lucrative marketplace basically creating a whole industry that was a part of the overall pre-recorded video industry, that being the budget priced pre-recorded video business.

This part of the home video business has provided thousands and thousands of jobs that would not have existed if not for the Public Domain movies providing access into this marketplace that was dominated by the large corporations. Now we can only guess that those same large corporations are behind this action to take the business away from this industry.

It has also brought down the pricing of the overall pre-recorded video business down to a much more realistic level thus benefiting the overall public as a whole.

UNITED AMERICAN VIDEO/AUDIO/COMPUTER SOFTWARE/APPLIANCE  
803/548-7300 • FAX 803/548-3335

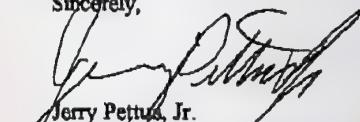
Ms. Dorothy Schrader, General Counsel  
Page two  
December 6, 1993

2) One other important reason is that the budget video industry has brought down the pricing of the overall pre-recorded video to a much more realistic level thus benefiting the overall public as a whole. The average retail price for videos in 1985 when the budget video business was just beginning was approximately \$39.95. With the onslaught of the budget video business because of the Public Domain properties available, the subsequent budget retail price points from \$3.99 up to \$9.99 the average retail price for videos today is around \$12.97. There is absolutely no way that the retail pricing would have come down nearly this much if not for the budget video revolution.

So in adding these points to the Ad Hoc Committee For A Reasonable Copyright Term we hope for a much more balanced judgment and to show that there is much more at stake than many people in Washington may realize.

If you would like additional information about United American Video or our activities please do not hesitate to contact us.

Sincerely,



Jerry Pettus, Jr.  
President/CEO  
UAV Corporation

**Earl A.  
4466 Jeff Rd.  
(205) 509-4183**

October 22, 1993

Ms. Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100  
Washington, DC 20540

Dear Representative Cramer:

The American public and scholars of film

**Gene Blair  
Blair Ent.  
(205) 509-5946**

**GENERAL COUNSEL  
FOR COPYRIGHT**

**USC 28 999**

**RECEIVED**

Comment Letter

**RM 93-8**

**N 13**

Via Fax Transmission

and a challenge to another aspect of our freedom from, of all places, Washington.

Docket No. RM 93-8 which is to be proposed to extend the current term of copyright protection for a motion picture by 20 years, would extend the current term from the current 75 years to 95 years. This extension would be disastrous for research.

Music publishers and songwriters propose extending the term of copyright protection for the life of the author plus 50 years for their works. At a hearing before the Copyright Office on September 29, 1993, only those favoring these extensions testified. The announcement in *The Federal Register* on September 29, only discussed works by individuals and did not mention the proposed extension into films and other works. It is my belief that large entertainment corporations recognize that if the proposal to extend the copyright term for works for hire -- such as motion pictures -- is debated on its merits, it will fail. The media conglomerates, whose copyrights on films will soon expire -- are hoping to keep this quiet so their proposal can simply sail through Congress.

The United States Constitution grants Congress the power to "Promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries" (emphasis added).

The public policy of this country has always been to provide limited protection for a finite term to give creators incentive to create additional works. At the end of the limited term of protection, creative works fall into the public domain for the widest possible dissemination. That is the same philosophy that underlies the 17 year term for patents.

Public domain is an essential part of the creative process, and the courts have been consistent in recognizing this. In *Stewart v. Abend*, a landmark 1989 copyright case, the Supreme Court noted

continued.....

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Ms. Dorothy Schrader  
October 22, 1993  
Page 2

that the copyright provides a higher purpose than just providing income to authors and creators:

Although dissemination of creative works is a goal of the Copyright Act, the Copyright Act creates a balance between the artist's right to control the work during the term of copyright protection and the public's need for access to creative works. The copyright term is limited so that the public will not be permanently deprived of the fruits of an artist's labor.

Public domain status to any given work means that the creative works are more widely distributed, and the broad availability of ideas contributes to the creative process, thereby benefiting everyone. It is due to the worldwide public domain status of Leroux's 1910 novel, *The Phantom of the Opera*, that there are three completely different stage musicals touring the United States. In area of film, Frank Capra's *It's a Wonderful Life* (1946) was only recognized as a classic when it fell into the public domain and was widely seen for the first. Prior to achieving public domain status, this film was considered a creative and artistic failure by the very industry that is now attempting to alter our copyright laws.

Producers of films and television programs use public domain footage in their films to instruct and entertain. Documentary filmmakers can afford to create films for specialized audiences because they can obtain public domain material at reasonable prices from sources such as the National Archives. News programs on CNN, the broadcast networks and C-SPAN continually use readily available public domain footage to provide historical insight into current issues.

This proposal to extend the current copyright term to 95 years for motion pictures would have its most immediate effect on the decade of films copyrighted from 1918 to 1927. With few exceptions, the copyrighted survivors of this decade can only be seen at foreign film festivals or at archives. Extending the current term of copyright right will virtually guarantee that the public will continue to be deprived of hundreds of films, long ago abandoned by their creators, but still protected by copyright. This decade of film history will continue to remain on the shelf, unseen in the classroom, video store or on television or cable.

Thousands of nearly forgotten American films are awaiting the freedom of public domain. For many films, their public domain status will have arrived too late because their makers and copyright holders lost all copies due to economic considerations which resulted in poor storage and neglect, thus depriving all Americans significant portions of their film heritage.

*A 1933 study by the Library of Congress documented that the vast majority of films from the silent era had been lost forever due to ownership apathy. The scattered survivors were donated to film archives, which preserve, catalog and store them with Federal funding. For many of these, all that is limiting their public availability is expiration of their copyrights. As proposed, what will the owners of these copyrights have to do in return for the extra copyright protection to be provided by Docket RM 93-8? Nothing. They assume no obligation to preserve their films, make them available or even grant permission for archive screenings. Where is the benefit to the American public?*

Ms. Dorothy Schrader  
October 22, 1993  
Page 3

Further, it should be noted that one of the purposes of this proposed legislation touted by its advocates is to bring the United States "in synch" with the European community. However, they fail

to note that current 75 year term for works for hire in the United States is *already longer* than the 70 year term which has been proposed (but not yet adopted) in the Europe. Indeed, the current term for motion pictures in most European countries is 50 years.

If this proposal passes, it will be not that last change. It is my understanding that there will be future attempts to restructure the Copyright Act even further. The Songwriters Guild of America encourages the Copyright Office to recommend giving "perpetual life to copyrights", while other proponents want to revive the copyright on *all works from the Twentieth Century which have fallen into the public domain*. The 28-page submission by the Coalition of Creators and Copyright Owners specifically solicits restoration of protection for public domain works. If these proposals were implemented, *all films from 1898 to the present would be protected by copyright!* The prospect of having to retrospectively clear or eliminate public domain footage from thousands of already produced documentaries and educational films is staggering and would create a gigantic legal boondoggle which would flood our already overburdened court system.

In conclusion, it is my belief that the 20 year extension of copyright for works for hire, such as motion pictures, should not be submitted to Congress for many reasons, but specifically:

1. This is contrary to the stated purpose of the copyright outlined in the United States Constitution
2. U.S. copyright extension is not compatible with the European proposal
3. It benefits a handful of large companies with no public benefit. These are the same companies which allowed so much of our film heritage to nearly be lost in the first place.
4. Archives have some of these copyright-protected with Federal funds, yet these titles are still unavailable for screening to the general public.
5. These films are of great educational and historical importance and should be given as wide dissemination as provided by our current copyright laws.
6. Public domain status of these films will encourage and foster the creation of new works, such documentaries and educational films.

Our existing copyright laws have served us well and it is unlikely that the tremendous growth by independent producers in the entertainment industry would have been possible had the mega-billion dollar entertainment monopolies had in effect the provisions that are now proposing. RM

93-8 benefits only these conglomerates at the expense of the American public's access to our film heritage.

I oppose RM 93-8 and any attempts to revive copyrights to works already in the public domain and urge you to do the same.

Sincerely,

  
Carl Blair

DOL

ion



Orig → KBS  
cc → DS  
ML  
MJK  
ES  
IPL4

## UNIVERSITY OF MARYLAND AT COLLEGE PARK

COLLEGE OF JOURNALISM

26 October 1993

Dorothy Schrader, General Counsel  
Copyright Office  
Library of Congress  
Dept. 100  
Washington, D. C. 20540

GENERAL COUNSEL  
OF COPYRIGHT

OCT 27 1993

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Comment Letter	
RM 93-8	
No.	14

Dear Dorothy Schrader:

In the matter of the Docket No. RM 93-8, I oppose the extension of the copyright for works of hire from 75 to 95 years.

I particularly oppose this proposed change for motion pictures.

Please do not revive copyrights for films already in the public domain.

I oppose this action as it is contrary to the purpose of the United States Constitution and would severely effect the teaching of the mass media in universities and colleges.

We need to see our film heritage, not place it on a shelf out of sight.

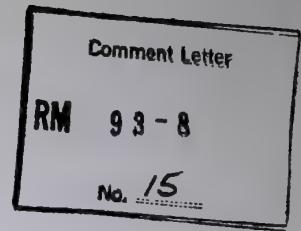
Tours truly,

Douglas Gomory  
Professor

GENERAL COMMITTEE  
OF COPYRIGHT

OCT 29 1993

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COMMENTS OF THE  
RECORDING INDUSTRY ASSOCIATION OF AMERICA

in conjunction with the  
Copyright Office  
Notice of Inquiry

regarding the

Duration of Copyright Protection

October 26, 1993

The RIAA, a non-profit trade association representing the interests of U.S. record companies who create and produce over 90% of the recorded music consumed in the United States, welcomes the present Copyright Office initiative to examine the question of extending the current term of protection.

The economic legal and policy implications of such a shift, as well as developments in the international arena, deserve careful and deliberative study.

Any analysis of the extension of term of protection must necessarily consider the impact on the existing balance and symmetry between different classes of creators and, at a minimum, include corresponding extensions of term for works whose term of protection is not measured by the life of the author -- i.e. anonymous and pseudonymous works and works made for hire. From the international perspective, there appears to be little interest demonstrated by any of our trading partners in the creation of a new, international standard extending the term of protection beyond the existing norm of life-plus-fifty. A proposal by the WIPO Secretariat to do so within the context of the Berne Protocol, for example, was rejected by the Committee of Experts and is no longer on the agenda for the

Protocol. While the European Commission has recently moved to harmonize the term of protection within the Community at life-plus-seventy, that action is probably best understood as flowing from Treaty of Rome "free circulation of goods" concerns rather than out of copyright policy, particularly when viewed in conjunction with the E.C. position on extension of term within the framework of the Protocol.

Furthermore, to the extent that the Commission Directive on Duration reflects copyright policy, it is a policy that the United States has, and should continue to, reject. The decision to extend the term of protection for "author's rights" reflects a desire of certain EC member states to maintain a distinction between author's rights and so-called "neighboring rights." There was general agreement within the E.C. that the existing term of protection for neighboring rights -- i.e. twenty years -- was inadequate and no longer reflected economic realities or international norms. Certain EC states demanded, however, that it was politically incumbent to preserve an overall hierarchy within their copyright systems by simultaneously increasing the term of protection for author's rights. This "hierarchy" of rights has been used by many of our trading partners to defeat U.S. objectives to

achieve a high level of protection for sound recordings and to ensure the rigid application of national treatment for U.S. producers and performers.

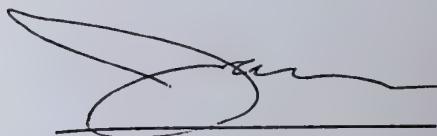
In assessing whether the United States should take the lead in trying to create support for new international norm-setting in this area, the Copyright Office should examine whether such leadership would inadvertently contribute to maintaining a distinction between author's rights and so-called neighboring rights among many of our trading partners. This invidious distinction operates against U.S. economic interests and the Copyright Office should carefully consider whether and how such a U.S. initiative could be used positively with a view to eliminating this distinction.

The Copyright Office has taken a leadership position over the past number of years, with the strong support of the RIAA, the Administration, Congress, and the copyright community, in trying to eliminate these trade-distorting distinctions by creating a seamless web of copyright protection, regardless of the legal characterization of such rights. Extension of the term of protection of "author's rights", as that term is understood by many of our trading

partners, to life plus seventy appears unlikely to lead to a corresponding increase in the protection of so-called neighboring rights. Thus, U.S. action in this regard may have unintended consequences that are counter-productive to the extent that U.S. action is understood as support for the EC position. The United States has a significant economic stake in ensuring that we do not support these dangerous dichotomies -- particularly in an age where technology and the development of multi-media entertainment demands the development of a simple and non-discriminatory legal system.

In conclusion, RIAA stands prepared to assist the Copyright Office in its examination of the many complex issues raised by this subject. At the same time, we note that there are far more important and pressing issues to address in the present copyright environment.

Respectfully submitted,



Jason S. Berman/President

**MOVIES UNLIMITED**

Dorothy Shrader, General Council  
Copyright Office, Library of Congress  
Department 100  
Washington, DC 20540

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OCT 28 1993

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Comment Letter

RM 93-8

No. 16

October 25, 1993

Re: Docket #RM93-8

The new copyright revision bill that is being deliberated by both The Senate and The House subcommittees, contains some provisions that I do not think are fair. In addition, I oppose any attempts to revive the copyrights of films that are already in the public domain.

These provisions are contrary to the purpose of copyright as outlined in the United States Constitution, and are not in our country's best interests. These provisions give tremendous advantages to only a handful of large companies, with no public benefit at all. These are the same large companies that allowed so much of our nation's film heritage to be nearly lost in the first place, and then took a tax write-off by donating their unwanted surviving films to film archives. Even though film archives have preserved these films with Federal funds, the majority of the restored films are still not available to the public.

Since public domain films are often used to create new works, many documentaries and educational films will never be made. Young producers are using private funds to restore marvelous older and lesser known works, and have made them available to many of Hollywood's best known and most celebrated directors, who purchase these rare films for their libraries where these works can be studied more closely. These restored works are not limited to feature films, but also encompass TV shows, documentaries, short subjects and so much more. Even old TV commercials can be viewed, studied and enjoyed by generations of film enthusiasts and historians.

Many of the films that I have described have been abandoned by their producers years ago, and have become public domain titles after the twenty-eight year copyright period has ended. To keep these films available, I urge Congress to amend the bill so that it excludes "all unregistered works" from any type of an automatic renewal protection. Either that, and more preferably, amend the bill so that it excludes filmworks of any type, "whether registered or not" from any automatic renewal protection.

Thank you for your time.

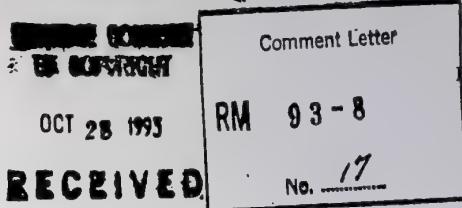
Very truly yours,

*Jerry Fretbowitz*  
Jerry Fretbowitz  
President

THE STATE UNIVERSITY OF NEW JERSEY

# RUTGERS

Faculty of Arts and Sciences • Program in Cinema Studies  
43 Mine Street • New Brunswick • New Jersey 08903 • 201/932-7355



Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100, Washington, DC

Dear Ms. Schrader,

I am writing to you in reference to the recent hearings held by the Copyright Office dealing with the proposed extension of copyright protection (Docket No. RM 93-8) for an additional 20 years. I understand that the only testimony offered at these hearings was from copyright holders and corporations holding copyrights for works made for hire. As a participant in several Library of Congress hearings regarding the status of motion pictures, I am surprised that a greater effort was not made to secure testimony from other groups, in particular, from those who might make a case for the public and the public domain.

The Constitution grants copyright protection through a provision which grants authors the right to exploit and control their work "for limited times." As I understand it, this protection, which serves to encourage artistic and intellectual creativity by enabling authors to enjoy the fruits of their creations, is a form of "limited conditional monopoly" over the work. As Peter Jaszi successfully argued in The Birth of a Nation case (US Court of Appeals, 73-2795, p. 37), "like all statutory monopolies, that of copyright exists in tension with social and governmental policy disfavoring economic monopolies generally, and the grant of monopoly is not to be extended beyond its explicit term." In other words, the state or government provides limited protection to the author; but, in return for this protection, the copyrighted work will eventually enter the public domain, where it can be more widely distributed and used by the public. I am concerned that the repeated extension of copyright protection (which was earlier extended in the 1976 Copyright Act) will erode the basic concepts of "limited time;" and the public domain.

At the very least, your Office ought to secure (as actively as possible) the comments of as many parties as possible who might be affected by these proposed changes. I am a film teacher and I am concerned with the declining availability of 16mm film for classroom use. I, for one, would like to know what impact these proposed changes in the copyright law might have on film

availability. I would suggest that a study be done, reviewing the impact of the 1976 extension of protection on film availability, before the Library completes its report to Congress on this proposed change. I would also like to know what benefit these changes might have for the public.

Sincerely,

John Belton  
Member, National Film Preservation Board

# REEL MOVIES

## INTERNATIONALE

November 2, 1993

Dorothy Schrader  
General Counsel  
Copyright Office, Library of Congress  
Department 100, Washington, DC 20540

FAX: 1-202-707-8366

REF: DOCKET #RM93-8

Dear Ms. Schrader,

We wish to comment on the proposal to extend the copyright on works for hire from 75 years to 95 years. Our company is a member of the American Film Marketing Association and has been involved in the international distribution of motion pictures, television series and documentaries for the past 12 years.

We wish to express our vigorous opposition to this proposal. As we deal extensively with both new motion pictures and television shows, but also with distributing public domain movies internationally, we have become extremely knowledgeable regarding other countries' copyright laws -- especially those of Berne Convention countries. Almost all of the Berne Convention countries have copyright laws presently limiting copyright protection to no more than 50 years. This includes such countries as England, France, Germany and Italy. Even if they decided to raise their copyright protection to 70 years, that is still 5 years short of our present laws. The United States does not need to have copyright protection in excess of the other Berne Convention countries.

This proposal could only benefit a few large studios, while causing the loss of literally thousands of independently produced films. We are not exaggerating when we say that thousands of films from the United States film heritage will be lost to future generations. These films are not being cared for in a proper way, like the large studios care for their films. Yet these films are of great educational and historical importance to anyone who wishes to view films from the past. The public domain is also utilized to create documentaries and educational films. Many documentaries will never be made in the future if these films are lost.

GENERAL COUNSEL  
OF COPYRIGHT

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Comment Letter

RM 93-8

No. 18



PAGE 2

We can give you two examples. Two years ago, a film lab in Colorado was going out of business. They were preparing to throw all of the negatives and film prints of films whose owners they could not locate into the trash dumpster. We found out through a friend that the lab had some animated series. We paid the storage charges on three animated series plus a motion picture, saving them from the dumpster. Later we found that two of the animated series had duplicate negatives existing and were under copyright, but one of the series, the negatives we bought were the only element in existence for that animated series. It was the first animated series filmed in color that was syndicated in the United States. It had never been registered for copyright and would have been destroyed.

In another instance, a warehouse in Los Angeles was selling off the negatives and all film prints of an animated series stored at a warehouse where the storage fees had not been paid in a number of years. Again, had we not paid the storage charges, the series, educational in nature, would have been forever lost. We own numerous 35 and 16mm prints -- some of them quite rare -- copies of which we distribute to television stations and video distributors world wide. We would never have purchased these prints and saved them from oblivion if we had not been able to see a profit. There is no public money available to save the thousands of film prints and negatives in existence that will be destroyed in the future through carelessness, bankruptcy and the deaths of the creators.

The large studios will always find some way to protect their assets. But for the thousands of independently made motion pictures, in many cases the only hope of their being seen by future generations is the prospect of their falling to the public domain.

In conclusion, we vigorously oppose any changes in our current copyright laws, which are more than sufficient, and in fact are more stringent than any other country's copyright laws.

Kind regards,



Tom T. Moore  
President

cc: David Pierce  
Senator Dennis DeConcini, Chairman  
Rep. William J. Hughes, Chairman  
Senator Phil Gramm  
Senator Kay Bailey Hutchison.  
Representative Sam Johnson  
Representative Eddie Bernice Johnson

TTM/smp

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October 27, 1993

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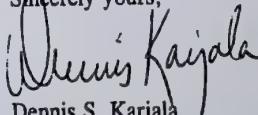
Re: Copyright Office Term of Protection Study

Dear Dorothy:

On behalf of myself and thirty-four other United States copyright law professors, I enclose an original and ten copies of a "Comment of Copyright Law Professors on Copyright Office Term of Protection Study." I have executed the Comment on behalf of all signatories pursuant to their express written or oral authorization.

All of us hope that the Copyright Office will find the Comment helpful in the ongoing deliberations of the important issue of extending the copyright term of protection. If you have any questions or if I can be of further service in this matter, please do not hesitate to contact me.

Sincerely yours,

  
Dennis S. Karjala  
Professor of Law

Comment Letter

RM 93-8

No. 19

October 27, 1993

GENERAL COUNSEL  
U.S. COPYRIGHT

NOV 2 1993

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Comment of Copyright Law Professors  
on  
Copyright Office Term of Protection Study

Submitted to: Copyright Office  
Library of Congress  
Department 100  
Washington, D.C. 20540

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The undersigned are all professors of law at United States law schools who teach and write in the copyright field.<sup>1</sup> We question whether the proponents of extending the period of protection for works of natural authors from the current life + 50 years to life + 70 years and/or for works for hire from the current 75 to 95 years have presented evidence demonstrating that the public interest in such an extended term outweighs its costs.

### Introduction

Both Congress and the courts have uniformly treated United States copyright law as an instrument for promoting progress in science and the arts to provide the general public with more, and more desirable, creative works:

The limited scope of the copyright holder's statutory monopoly, like the limited copyright duration required by the Constitution, reflects a balance of competing claims upon the public interest: Creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the other arts. The immediate effect of our copyright law is to secure a fair return for an "author's" creative labor. But the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good.<sup>2</sup>

United States copyright tradition is in this respect philosophically different from that of many other countries that treat intellectual property as natural rights of individual creators. Under our system, Congress need not recognize intellectual property rights at all, but if it does, the purpose must be to promote innovation in science and the useful arts.

Our system of copyright protection is therefore delicately balanced. We wish to recognize property rights in creators so that consumers have available an optimal number and quality of works but want those rights to be no stronger than necessary to achieve this goal.<sup>3</sup> We do not recognize new intellectual property rights, or strengthen old ones, simply because it appears that a worthy person may benefit; rather, we do so only for a public purpose and where it appears that there will be a public benefit. The current statutory foundation of copyright protection, the Copyright Act of 1976, is itself the product of lengthy debate and represents innumerable compromises that seek to achieve the proper balance between private returns to authors and public benefit, including a broad public domain that permits current

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1. Each signatory hereto joins in these Comments solely on his or her own behalf and not on behalf of any institution or organization with which he or she is affiliated.
2. Twentieth Century Music Corp. v. Aiken, 422 U.S. 151, 156 (1975)(footnotes omitted).
3. I P. Goldstein, Copyright § 1.1, at 6-7.

authors to build on the cultural heritage from those who have come before them. A natural corollary is that this delicate balance can be easily upset by a series of ad hoc changes.

Former Representative Kastenmeier, the primary architect of the current statute, recognized this point very clearly and has set forth the conditions that should be met by persons seeking change: (1) The proponent should show that the new interest will not violate existing principles or basic concepts. (2) The proponent should present an honest analysis of all the costs and benefits. (3) The proponent should show how recognizing the new interest will enrich or enhance the public domain.<sup>4</sup> In sum, "the proponents of change should have the burden of showing that a meritorious public purpose is served by the proposed congressional action."<sup>5</sup>

On these ground rules, we question whether the proponents of a life + 70 year period of copyright protection have met their burden of proving that the change is not in violation of basic United States copyright principles, that the public benefits outweigh the costs, or that the public domain will be enriched. On the contrary, the public domain will not be enriched but rather will be diminished. If this loss to the public domain is not balanced by a greater incentive to create new works, it would seem that the public benefits will not outweigh the costs. And if this is true, we would be violating our basic principle setting the general public good as the ultimate aim of the copyright system.

Europe, whose copyright law is based more on a natural rights tradition, has recently moved to a life + 70 regime, but that should not cause us to change our underlying intellectual property philosophy nor does it provide a reason for avoiding the careful cost/benefit analysis called for by that philosophy. The United States joined the Berne Convention for many good reasons, one of which was to become an influential leader in world intellectual property policy. Our underlying policy has served us well, as shown by our dominant position in the worldwide markets. Rather than following Europe we might better seek to persuade Europeans that our approach to intellectual property rules both rewards creativity and promotes economic efficiency.

This Comment seeks to establish the framework for undertaking the cost/benefit analysis required by United States copyright principles of the proposed change to a life + 70 year period of protection. The Comment first analyzes the problem on the basis of United

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4. Robert W. Kastenmeier & Michael J. Remington, The Semiconductor Chip Protection Act of 1984: A Swamp or Firm Ground?, 70 Minn. L. Rev. 417, 440-41 (1985). A fourth component of Mr. Kastenmeier's test is a clear definition of the new interest. That component is clearly satisfied for the proposal to extend the term to life + 70 years.

5. Id. at 440.

States domestic considerations and copyright tradition. It then goes on to analyze how international considerations affect the analysis.

## I. Domestic Considerations

### A. Costs of a Longer Protection Period

Two kinds of costs are potentially associated with the proposed change to a life + 70 year period of protection. The first is the economic transfer payment to copyright owners during the period of the extension from consumers or other producers who would otherwise have free use of works. The second is the cost to the public of works that are *not* produced because of the diminished public domain.

#### 1. Economic Costs and Transfers

The direct economic costs of a 20-year-longer period of protection, although difficult to calculate precisely, can include higher cost to the consuming public for works that would otherwise be in the public domain. In the legislative history of the Copyright Act of 1976, it was argued that the general public received no substantial benefit from a shorter term of protection, because the cost for works in the public domain was frequently not significantly lower than that for works still under copyright.<sup>6</sup> Economic theory tells us, however, that the price to the public for popular works should, through competition, decrease to the marginal cost of producing the work if there is no monopoly. If the work is under copyright, the marginal cost of production would have to include the royalty owing to the copyright owner, even if there is general licensing to competing producers of the work. Moreover, if there is no general licensing of a copyright-protected work, the price can be expected to be set at the level that maximizes the return of the copyright owner, which is invariably higher than the marginal cost of production. Consequently, any claim that the public pays the same for public domain works as for protected works seems implausible, at least in general.<sup>7</sup> Educational and scientific uses would also seem to be large markets for

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6. H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 133 (1976).

7. Of course, the market for many public domain works may often be small, with the result that competition is thin, or even nonexistent. This can allow, say, a book publisher to charge a price for a republished public domain work that is consistent with prices for similar types of books that are under copyright. Given the thin market, such a price may be necessary for this publisher even to cover production costs (including a normal return). This does not mean that the public domain status is irrelevant, because if a royalty were required in addition, such a book might not be republished at all.

It may also be that the works in question are not public domain works but rather derivative works based on public domain works. A new derivative work is, of course, itself copyright protected and can be expected to sell at the same price that the public pays for other protected works in that category. In

public domain works. At a time of rising educational costs we should inquire into the effect on our schools of a reduced public domain due to an extended protection period. Something more than anecdotal evidence should be presented before we accept the claim that the consuming public will not incur higher costs from the longer period.

## 2. Cost of a Diminished Public Domain

An even more important cost to the public is that paid in desirable works that are *not* created because of the continuing copyright in underlying works:

More than a nodding acquaintance with the concept of public domain is essential to comprehension of intellectual property law and the role of the United States Congress in creating that law. The addition of a creation to the public domain is an integral part of the social bargain inherent in intellectual property law.<sup>8</sup>

While primary control over the work, including the rights to refuse publication or republication and to create derivative works, properly remains in the author who has created it, giving such control to distant descendants of the author can deprive the public of creative new works based on the copyright-protected work. Artistic freedom to make creative derivative works based on public domain works is a significant public benefit, as shown by musical plays like Les Miserables, Jesus Christ Superstar, and West Side Story, as well as satires like Rosencrantz and Guildenstern are Dead and even literary classics like James Joyce's Ulysses. Although these might not necessarily be considered infringing derivative works even if the underlying work were under copyright, or might be excused by the fair use doctrine if otherwise infringing, their authors must necessarily take a cautious approach if a license is unavailable. When copyright subsists long after an author's death and there is no

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this case, continued copyright protection for the underlying work may require sharing of the profits generated by the new work, with no economic benefit to the public in the form of a lower net price. As there is also no net economic cost to the public, however, the economic effect of lengthening the protection period requires identification of the parties sharing the monopoly. One of those parties is, by hypothesis, the new author, whose creativity has resulted in the new derivative work. The other will be the owner of the copyright in the underlying work, who may or may not be distant descendants of the original author. In this case, true concern for authors would seem to favor *not* lengthening the protection period.

Finally, as discussed below, when the underlying work remains under copyright, the real cost to the public may come from those new derivative works that are *not* created because of the new author's inability to negotiate permission from whoever owns the copyright 50 years after the original author's death.

8. Robert W. Kastenmeier & Michael J. Remington, supra note 4, at 459; see also Peter Jaszi, When Works Collide: Derivative Motion Pictures, Underlying Rights, and the Public Interest, 28 U.C.L.A. L. Rev. 715, 804-05 (1981).

provision for compulsory licensing, the creation of derivative works that closely track substantial part of the underlying work can be absolutely prohibited by copyright owners who have no creative relationship with the work at all. Authors of histories and biographies can also be inhibited from presenting independent analyses of earlier authors and their works by descendants who, for whatever personal reason, use copyright to prevent the publication of portions of protected works.

An important cost paid by the public when the copyright term is lengthened, therefore, is contraction of the public domain. The public domain is the source from which authors draw and have always drawn.<sup>9</sup> The more we tie up past works in ownership rights that do not convey a public benefit through greater incentive for the creation of new works, the more we restrict the ability of current creators to build on and expand the cultural contributions of their forebears. The public therefore has a strong interest in maintaining a rich public domain. Nobody knows how many creative works are *not* produced because of the inability of new authors to negotiate a license with current copyright holders, but there is at least anecdotal evidence that the number is not insubstantial.<sup>10</sup> Unless evidence is provided that a life + 70 regime would provide a significant added incentive for the creation of desirable works, the effect of an extension may well be a net reduction in the creation of new works.

This point may be highlighted by the rapid developments now occurring in digital technologies and multimedia modes of storing, presenting, manipulating, and transmitting works of authorship. Many multimedia works take small pieces of existing works and transform them into radically different combinations of images and sounds for both educational and entertainment purposes. Some people believe that the existing protection period, coupled with termination rights, is distorting or inhibiting the creation of valuable multimedia works because of the transaction costs involved in negotiating the number of licenses required. Ultimately, the rapid changes in the intellectual property environment for creating and disseminating works may necessitate a reassessment by the international community of the underlying intellectual property rules. In the meantime, extending the protection period, especially if it is made retroactive to cover works that have recently entered or are about to enter the public domain, can only exacerbate this problem. The

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9. See generally Jessica Litman, The Public Domain, 39 Emory L.J. 965 (1990); David Lange, Recognizing the Public Domain, 44 L. & Contemp. Probs. 147 (1981). For an argument that copyright is also intended to accommodate users' rights, see L. Ray Patterson & Stanley W. Lindberg, The Nature of Copyright (1991), which includes a Foreword by former Congressman Kastenmeier.
10. Nearly 50 years ago Professor Chafee pointed to examples in which the veto power of copyright in an author's descendants deprived the public of valuable works. Chafee, Reflections on the Law of Copyright: II, 45 Colum. L. Rev. 719 (1945). Professor Jaszi has provided examples of derivative-work films whose continued distribution has been limited or even suspended because of conflicts with the owner of the copyright in the underlying work. Peter Jaszi, supra note 8, at 739-40.

United States should be leading the world toward a coherent intellectual property policy for the digital age and not simply following what takes place in Europe.

## B. Benefits to the Public of an Extended Term of Protection

The difficulty of demonstrating that lengthening the term of protection supplies public benefits that outweigh the costs is perhaps best shown by the Joint Comments of the Coalition of Creators and Copyright Owners provided to the Copyright Office in this matter. This 26-page documents contains only one short paragraph on the public interest:

The Constitutional purpose of copyright is to promote the progress of science and useful arts. The means of doing so is by granting exclusive economic rights to creators and copyright owners. The better those incentives, the more creativity, the greater the progress in science and useful arts, and the more the public interest is served.<sup>11</sup>

This statement seems simply to assume that a longer term will automatically increase the incentive to create and does not undertake an analysis of whether that benefit will be of sufficient magnitude to offset the costs.

It seems to us that the arguments, still on purely domestic grounds, in favor of extending the copyright term to life + 70 years can be divided essentially into three groups: (1) Increased incentives for the creation of desirable works; (2) The "natural justice" in lengthening the period of control in descendants of the author; and (3) Increased incentives for the distribution of works that would otherwise be in the public domain. Nearly all of these arguments could be made, however, for almost *any* increase in the term. As discussed in the Introduction, our constitutional concept of a limited term places the burden of demonstrating that the benefits of a longer term outweigh the costs on those seeking it. In fact, the domestic benefits of a life + 70 regime are speculative, which necessarily creates skepticism whether they outweigh the costs.

### 1. Increased Incentive for the Creation of Works

As pointed out in the Introduction,<sup>12</sup> United States law has always treated authorship protection as an instrument for achieving the larger goal of supplying the public with creative works of authorship. The proponents of longer protection should point to empirical evidence

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11. Joint Comments of the Coalition of Creators and Copyright Owners, In the Matter of Duration of Copyright Term of Protection, Docket No. RM 93-8, at 22.

12. See text accompany notes 2-5 *supra*.

indicating that a longer protection period would add something to creation incentives. Common sense suggests that it would not add very much.<sup>13</sup>

Only a small percentage of copyright-protected works retain significant economic value 50 years after the author's death, and it is essentially impossible to predict at the time of creation which works will have long-term survival value. This inherent economic riskiness makes the present value of a work at the time of creation only marginally greater, if at all, under a life + 70 regime than its present value under a life + 50 regime. Moreover, the existence of inalienable termination rights exercisable 35 years after any transfer by an author means that an extra 20 years on the ultimate duration of the copyright can add no value to initial transfers of the copyright by the author. Therefore, authors motivated by immediate economic return would seem not to be further stimulated to creative production by the longer term.<sup>14</sup>

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13. As Macaulay observed over 150 years ago:

[T]he evil effects of the monopoly are proportioned to the length of its duration. But the good effects for the sake of which we bear with the evil effects are by no means proportioned to the length of its duration. . . . [I]t is by no means the fact that a posthumous monopoly of sixty years gives to an author thrice as much pleasure and thrice as strong a motive as a posthumous monopoly of twenty years. On the contrary, the difference is so small as to be hardly perceptible. . . . [A]n advantage that is to be enjoyed more than half a century after we are dead, by somebody, we know not by whom, perhaps by somebody unborn, by somebody utterly unconnected with us, is really no motive at all to action. . . .

8 Macaulay, Works (Trevelyan ed. 1879) 199, quoted in Chafee, *supra* note 10, at 719, requoted in A. Latman, R. Gorman & J. Ginsburg, Copyright for the Nineties 259 (3rd ed. 1989).

14. It is true that, at the time termination rights accrue, the holder of the termination right, who will be either the author or a descendant of the author, may have a better idea of the work's survival value than was possible at the time of creation. An extra 20 years of copyright duration at that time may therefore increase the value of the work to that rightholder. Unfortunately, if the holder of the termination right is in fact the author, the extra 20 year duration of the term will be of minimal value, because by hypothesis the term has at least 50 years to run. The reason is that, given the riskiness of any investment in a copyright, even one that has continued value after 35 years, the present value of a life + 70 copyright is unlikely to be significantly greater than that for a life + 50 copyright.

On the other hand, if the author has been dead for, say, 30 years at the time termination rights accrue, the 40-year duration of the rights falling upon the author's descendants after termination under a life + 70 system may admittedly give those rights measurably greater value than if the remaining duration were only 20 years. The proposed life + 70 system would, therefore, give *some* differential economic benefit to *some* descendants of authors that is not available under the current system, namely, those who exercise termination rights many years after the author's death. What is unclear, however, is whether evidence exists to show that providing such an uncertain benefit to these descendants would spur authors to greater production.

## 2. Natural Justice

Although the United States copyright system is grounded on a philosophy of instrumentalism or utilitarianism rather than on notions of natural justice, that is not to say that natural rights concepts play no role whatsoever in drawing the copyright balances.<sup>15</sup> The natural justice argument for extending the period of protection must rest on a claim that either (1) the descendants of creative authors whose works continue to have economic value somehow "deserve" an increased economic reward or that (2) descendants of creative authors whose works have not yet been exploited a half century after the author's death should retain control over whether and the manner in which such works will be exploited in order best to carry out the desires of the original author. Again, the question must be whether either claim has enough plausibility to offset the costs of the increased period of protection.

The longer term might provide an extra economic benefit to the descendants of authors who hold termination rights that become exercisable many years after the author's death.<sup>16</sup> Still, it should not be forgotten that these descendants receive a significant benefit even under the current system when the work is still popular at the time of termination. The added benefit to these descendants from a life + 70 system, moreover, will accrue haphazardly, as it will be available in nontrivial amounts only with respect to works whose copyright was transferred by the author in the last years of the author's life.<sup>17</sup> One must ask whether there are equities in "natural law" or otherwise that favor such a chancy extra economic reward to the author's descendants over the costs of the longer protection period.<sup>18</sup>

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15. 1 P. Goldstein, supra note 3, § 1.1, at 8-9.

16. See note 14 supra. If the termination rights accrue very shortly after the author's death, the inherent riskiness in copyrights, which implies a high discount rate, makes the present value at the time of termination under a life + 70 system little if any greater than the present value under a life + 50 system.

17. See note 14 supra.

18. As for maintaining an income stream for more distant descendants of authors, we note first that this is not the inevitable result of a longer protection period. The copyright in works that have been exploited and become popular will often have been transferred by the author or her descendants. Any termination rights with respect to the work will have already been exercised before the descendants in question here ever come into the copyright picture. It is very likely that the copyright will have been retransferred after any termination before the current life + 50 year period has expired. Unless these transfers provide for a continuing royalty, there will be no royalties for the author's descendants who are alive after this period. Moreover, even if the transferee is under obligation to pay a continuing royalty, it cannot be assumed that the royalty stream will accrue to distant relatives of the original author, such as great-grandchildren. It may well be transferred outside the family, by will or otherwise, by earlier descendants. Second, because equitable claims to a continued income stream

The second natural law argument rests on rights to control exploitation of the work. Inherent in the panoply of copyright rights is a recognition that creators of works should have the right to receive the economic rewards that flow from exploitation of their works as well as broad powers over how and whether those works are exploited. Because most authors are directly and deeply concerned with the economic well being of their spouses and children, and because these close relatives might be assumed to understand the wishes of the author with respect to exploitation of her works after death, many people (although not all of the signatories hereto) concede the justice of allowing this panoply of rights to pass to the author's direct heirs. The assumption of a close personal relationship between author, spouse, and children that permits relatives to determine the author's posthumous wishes concerning exploitation, however, would seem to break down by the time we reach the distant descendants who would succeed to copyright ownership 50 years after the author's death. For some even 50 years of control after the author's death is a long time when the question is whether or how to exploit a work as opposed to whether payment should be made to a copyright owner for its exploitation. Nevertheless, even if natural law claims would favor efforts to determine the author's wishes concerning exploitation 50 years after death, it seems implausible that the distant relatives of authors who acquire copyright ownership under a life + 70 regime will be in a position to know and act upon those wishes.

### 3. Effect on the Distribution of Works

It was apparently argued in the hearings before the Copyright Office on the issue of extending the period of protection that without the market exclusivity of copyright protection there is no incentive to distribute works. It was also asserted that copies of public domain works that are available are usually of inferior quality.<sup>19</sup> Anecdotal evidence and statements of belief, however, should not substitute for persuasive evidence that the public will truly benefit from an extended term nor are they an appropriate basis for legislation.

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diminish with increasing temporal distance of descendants from the creative author, one must again inquire more precisely how new recognition of such an equitable claim comports with basic copyright principles and the social bargain that places works in the public domain after the copyright has expired.

For an argument that "natural law" does not in any event lead to unlimited or perpetual property rights in authors, because all authors owe a debt to the public domain at the time of their creation and therefore must be expected to contribute something to the public domain after an appropriate period, see Alfred C. Yen, Restoring the Natural Law: Copyright as Labor and Possession, 51 Ohio St. L.J. 517, 554-57 (1990).

19. 46 BNA Patent, Trademark & Copyright J. 467 (Sept. 30, 1993)(remarks attributed to Susan Mann, testifying for the National Music Publishers, and Bernard Sorkin, appearing on behalf of the Motion Picture Association of America).

In fact, if anecdotal evidence is to be relied upon, the absence of copyright does not appear to have had an adverse effect on the distribution of the lasting works already in the public domain. Both expensive as well as inexpensive editions of works by such authors as Mark Twain, Edgar Allan Poe, and Jane Austen are widely available. Derivative works based on public domain works, such as recent film versions of Shakespearian plays, also seem to be of good production quality and are often highly successful. In addition, the argument that an extra 20 years of protection would encourage a wider distribution or "higher production quality" of more obscure works should be supported by more than isolated examples. Copyright-protected works of authorship are not like many patented inventions that require an extensive investment in development costs before they can be marketed. Where the market for a work is thin, poor quality reproduction may be the only kind that is economically feasible. That would remain true even if the work were to remain under copyright.<sup>20</sup>

Beyond this open factual question, however, lies a more basic consideration. The bargain underlying our constitutional concept of copyright protection for limited times is that science and the useful arts are best promoted by allowing free access to works after protection has ceased.<sup>21</sup> That means allowing anyone to produce copies, including "bad quality" or inexpensive copies, or otherwise to use and even "misuse" works in an effort to create a new market or revive an old one. In other words, it means granting a limited monopoly for the purpose of providing an incentive for authors to create but after having achieved that goal returning to the free-market foundation on which our economic system is based. That bargain has been struck now at life + 50 years for the term of protection. The question is whether justifications have been demonstrated for changing this aspect of the social bargain.

## II. International Considerations

The analysis of the previous section suggests that the proponents of an extended copyright protection term have not yet proven that public benefits outweigh the costs based on consideration of United States copyright tradition and values alone. The United States can no longer take isolationist positions, however, particularly in the intellectual property arena. We must therefore ask whether the United States public might achieve international benefits from the longer term whether or not those benefits can be shown solely on the basis of domestic considerations.

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20. See also note 7 supra. Moreover, it seems implausible that a copyright would provide the incentive to invest in distribution of a work in the additional 20-year-extension period if the work has already fallen into obscurity at the end of the current period.

21. See text accompanying note 8 supra.

The European Community has now directed its members to adopt a life + 70 term of copyright duration. Possibly because of the European natural rights tradition, neither the proposal in Europe nor its adoption were based on a careful analysis of the public benefit of extending the term. The primary reason for this extension in Europe seems to be a desire for uniformity among the Common Market countries. Nevertheless, some argue that we must do the same to "protect" United States copyright owners, against whom the rule of minimum term may be used to provide a shorter period of protection in Europe for United States works (life + 50) than is given to European works (life + 70). They also argue that harmonization of the worldwide term of protection is a desirable goal in its own right and that failure to adopt the European term will have an adverse effect on the United States balance of international trade. The claim is also made that these purported benefits, or avoided harms, can be achieved at essentially no cost to the United States.<sup>22</sup>

The framework for analysis of these arguments remains as set forth in the previous section: Has a public benefit been demonstrated that outweighs the cost of longer protection? Crucial to all of these arguments is consideration of the public domain. In that light, we note that the first argument looks only at benefits to United States copyright owners, not to the United States public generally. Its persuasiveness decreases substantially when the effect on the public domain is considered, and that analysis also calls into question the claim that the benefits to copyright owners can be achieved at no cost. Moreover, while the harmonization and balance-of-trade arguments have plausibility, there are also plausible arguments on the other side, so a question remains whether benefits have been demonstrated that justify the cost of further constriction of the public domain.

#### A. Our Public Interest Is Furthered by a Broad Public Domain in Both Europe and the United States So Its Reduction Is Not Without Costs

This is not a conflict between Europe and the United States. The real conflict, in both Europe and the United States, is between the interest of the public in a richer public domain and the economic desires of copyright owners (who may or may not be relatives of authors) to control economic exploitation of the copyright-protected works that remain in their hands. The arguments for maintaining a rich public domain in the United States are not diminished by the withdrawal of works from the public domain in Europe, or even by the partial withdrawal of only "European" works. If Europe protects "its" copyright owners for a life + 70 year period, its public domain is reduced, and the European general public suffers a net loss unless it is shown that creation incentives outweigh the reduction. The United States public, however, as opposed to individual copyright owners, is not harmed by the absence of protection in Europe 50 years after the death of a United States author. The

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22. Joint Comments of the Coalition of Creators and Copyright Owners, In the Matter of Duration of Copyright Term of Protection, Docket No. RM 93-8.

United States public will in fact benefit if those United States works are exploited in Europe or America to produce works at lower cost or new and creative derivative works that the United States public can enjoy. Conversely, the public will pay a real cost, both as consumers and as potential creators of new works, to the extent the public domain is further reduced by the longer protection period.

It should be borne in mind that we are no longer talking about *authors*, whether European or American, of the works that would remain protected for the extra 20 years. Those authors will have been dead for 50 years. We *are* talking about current authors, however, who create new and valuable works based on the public domain. If the underlying work is unprotected in Europe as well as in the United States, those new United States derivative work creators, as authors, will reap the kind of economic benefits in both jurisdictions for which copyright is indisputably designed. There is real cultural value in allowing works to become part of the common heritage, so that other creative authors have the chance to build on those common elements.

#### B. Harmonization

Harmonization of worldwide economic regulations can often be useful, especially if differences in legal rules create transaction costs that inhibit otherwise beneficial exchanges. In some cases harmonization can be beneficial even if the uniform rule is in some sense less than ideal. Thus, a uniform first-to-file rule for patents might make sense even if we believe that a first-to-invent rule is better in the abstract, because otherwise United States inventors—the very people whom we are hoping to encourage through the offer of a patent monopoly—might find it too burdensome to seek international protection. In that case the uniform rule goes to the very existence of the patent and not simply an extension of the duration of protection. We need not, however, seek uniformity for its own sake, if it means compromising other important principles. If the United States determines that works should belong to the public domain after life + 50 years, no transaction cost problem is posed to United States authors by the longer period in Europe. The ultimate owners of their copyrights will, of course, be able to exploit them for a shorter period, but that is the result of the policy choice to make the works freely available and not because of the absence of harmonization.

Moreover, even if harmonization is desirable, the question remains, who should harmonize with whom? Although doubts were expressed about the constitutionality of a life + 50 year period of protection at the time the Copyright Act of 1976 was adopted,<sup>23</sup> that

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23. E.g., 14 Omnibus Copyright Revision Legislative History, House Hearings 1975 (Part 1) 133-34, 141-42 (testimony of Irwin Goldblum, Deputy Assistant Attorney General, Civil Division, Department of Justice). Some believe that special constitutional problems arise from an extension of the period of protection for works already under copyright, because it recaptures from the public domain works that

standard could then accurately be denominated international<sup>24</sup> and was in any event necessary if we were ever to join Berne. Life + 70 years is not an international standard today, notwithstanding recent actions in the European Community, nor will it become one without United States support. It was not even the standard in Europe until the European Council of Ministers directed that the EC member states adopt a uniform term of protection equal to the longest of any of its members. If the cost/benefit analysis required by our copyright tradition does not justify changing the social policy balances we have drawn, we might better use our influence to encourage the rest of the world to remain with our standard, and Europe to return to it, rather than follow a decision in Europe that was made without consideration of the factors we have always deemed crucial to the analysis.

### C. The Balance of Trade

The argument is also made that because the United States is a net exporter of copyright-protected works, our balance of trade will suffer from the shorter term of protection in Europe that will result from our failure to match Europe's life + 70 regime.<sup>25</sup> It is, however, not clear that failure to adopt Europe's life + 70 regime will in fact have such an effect on our balance of trade, even in the short term much less over the long term.

While Europeans may take more of our current works than we take of theirs, that was not necessarily true at the turn of the century. Works that are about to enter the public domain were created in 1918, so an additional 20 years of protection (if retroactive) would include European works going back to 1898. Our use of European works of classical music and plays from the turn of the century through the 1920's and '30's may outweigh the use Europeans make of United States works from the same era. Short term balance-of-trade analysis therefore requires an investigation of whether our reliance on such works that would become protected under the proposed extension would cost more than we would receive in return.

Moreover, a shorter term of protection in the United States may well encourage rather than discourage the production of new works that will find worldwide markets. We must recall that the public domain is the source of many of our finest and most popular works. The United States market is itself so large that, with both European and United States works in the public domain here 50 years after the author's death, it alone serves as a strong

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should be freely available under the "bargain" made at the time the work was created and offers no countervailing public benefit.

24. E.g., id. at 108 (testimony of Barbara Ringer, Register of Copyrights); id. at 120 (testimony of Joel W. Biller, Secretary for Commercial Affairs and Business Activities, Department of State).
25. Joint Comments of the Coalition of Creators and Copyright Owners, In the Matter of Duration of Copyright Term of Protection, Docket No. RM 93-8, at 10.

creation incentive. If the new work is based on a United States work that is also unprotected in Europe, that new work should be a part of the continuing United States export engine in the world market. Even if the new work is based on a European work that remains under protection in Europe, popularity of the work in the United States will almost surely result in a license (to use the underlying work) in Europe, again with a net export gain to the United States.

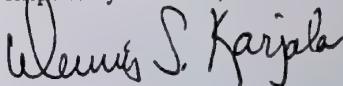
In short, none of the claims and arguments made for extending the term of protection--domestic or international--can be adequately analyzed without paying careful consideration not only to authorship that took place years ago but also to current authors for whom the public domain supplies the building blocks.

### Conclusion

Fundamental United States copyright principles, as envisioned by the drafters of the Constitution and as implemented through statute, balance the creation incentives of a limited-term monopoly against free public use upon expiration of the term. That free public use is not a mere artifact of a past era. Rather, it is the material out of which further progress in science and the useful arts is promoted. This delicate balance is upset by extending the term of protection absent a showing of a counterbalancing increase in creation incentives. This is true regardless of what other countries do with their period of protection and even if United States works are protected for a shorter period abroad than foreign works. Our copyright tradition for good reason requires proponents of change to justify their positions, and we question whether this has yet been done on the issue of extending the term of protection to life + 70 years for works of natural authors and to 95 years for entity authors.

Dated: October 27, 1993

Respectfully submitted,



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The undersigned are in agreement with the conclusion of this Comment for substantially the reasons given.

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GENERAL COUNSEL  
OF GOVERNMENT

NOV 8 1993

Comment Letter	
RM	93-8
No. 20	

October 26, 1993

Dorothy Shrader, General Counsel  
Copyright Office, Library of Congress  
Department 100  
Washington, DC 20540

RECEIVED

Dear Counsel Shrader:

This is to register our extreme opposition to the extension of copyright on works for hire from 75 to 95 years. We are a motion picture archive and for over thirty years we have been committed to the preservation of films others (including the companies that produced them) have abandoned. Not a day passes when we don't provide one of the major studios a print of one of their own pictures because they lacked the foresight to preserve their own productions. The way we subsidize our preservation activities is to use the materials we hold which are in the public domain to generate profits. We provide clips inexpensively to beginning filmmakers who would never be in a position to actually license footage from a studio. We do an enormous amount of work for the educational community and have participated in the creation of a vast array of interactive software. This fascinating new technology which has so much potential for revolutionizing our instructional methods is like every area of education, grossly under-funded. By making public domain images available to the interactive media industry, we are facilitating the creation of a number of products which are classroom bound.

Besides promoting the creation of independent films and educational materials, our preservation activities have insured that a number of films which otherwise would have been lost or forgotten have remained intact purely for study and enjoyment. The extension of the copyright laws would insure that those involved in the arduous task of film preservation would have absolutely no method of realizing any sort of profit and therefore this change in the law would be the death knell for motion picture restoration and preservation in this country. It also constitutes, by the very fact that this hitherto available media will come under control of agencies attached to conglomerates, the veritable privatization of the cultural past and history itself. At first blush this act seems like it would be no more than a benevolent gesture to assist filmmakers by extending copyright on their works however it would really do more than tie up and render totally inaccessible thousands and thousands of films which were long ago abandoned by their producers. I urge you to consider the ramifications of this and support film preservation by voting against this deceptive and dangerous measure.

Sincerely,  
Layne Murphy  
General Manager  
Budget Films Inc.

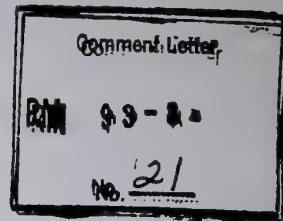
*Layne Murphy*

October 29, 1993  
731 Lee Circle Street  
Fort Meade, Florida 33166

GENERAL COUNSEL  
OF COPYRIGHT

NOV 3 1993

RECEIVED



Dorothy Schrader, General Counsel  
Library Of Office  
Library of Congress  
Dept. 100  
Washington, D.C. 20540

Dorothy Schrader :

Regarding Docket No. RM 93-8, many people, like myself, are opposed to extending works for hire(movies)copyrights from 75 years to 95 years. This will remove great movies from public domain. Thank you for your time.

Sincerely,  
*Kristine A. Gimmy*  
Kristine A. Gimmy

c.c. Senator Dennis DeConcini(D-Arizona)  
Chairman, Subcommittee on Patents, Copyrights, Trademarks

Opposition Committee  
OF COPYRIGHT

NOV 8 1993

Committee Letter

RMA

RECEIVED

To: William + Mary Duncann

No. 22

Docket No RM 93-8

I am writing this letter to tell you  
that I am strongly opposed to the  
proposal to extend the copyright  
for works for hire from 75 years to 95  
years.

I also strongly oppose any attempts  
to revive copyrights of films  
already in the Public Domain.

Ref: Docket Number. RM 93-8

Sincerely

Bill Sprague

Bill Sprague  
23 Hanover St.  
White River Junction  
Vermont 05001-1503

**Wade Williams Productions**

9840 Wornall Road Kansas City, Missouri 64114

(816) 943-0855

fax (816) 941-7055

GENERAL COUNSEL  
U.S. GOVERNMENT

November 3, 1993

NOV 4 1993

RECEIVED

Comment Letter

RM 93-8

No. 23

Dorothy Schrader, General Council  
Copyright Office  
Washington, D.C. 20504

Docket # RM 93-8

Dear Ms. Schrader,

I am a small independent distributor of motion pictures and television shows. For the past twenty years I have been buying rights in and to classic and vintage motion pictures. Some of these films have fallen into the public domain because of an error by the owners to file a timely notice. This is not fair or in any way equitable to the creators and owners of these properties. If your car license is not renewed in a timely fashion then you do not lose you car, you pay a penalty.

We support the efforts to extend the copyright for works for hire from 75 to 95 years and to restore all copyrights that have fallen into the public domain for any reason.

To deprive the creator, his assigns or heirs of the rights in and to their creations is nothing more than theft.

There is an effort by "public domainers" that pirate motion pictures world-wide to obstruct the efforts to restore copyrights so they use freely motion picture without licenses from the owners.

I would like to get actively involved in this issue and would like to testify in any hearings on the subject.

Sincerely,  
*Wade Williams*  
Wade Williams

N  
S  
A

**Nashville Songwriters  
Association International**

15 Music Square West  
Nashville, Tennessee 37203  
(615) 256-3354  
FAX: 256-0034

October 22, 1993

Ms. Dorothy Schrader  
General Counsel  
Copyright Office  
Library Of Congress  
Washington, D.C. 20540

GENERAL COMMITTEE  
OF COPYRIGHT

NOV 5 1993

RECEIVED

Comment Letter

RM 93-8

No. 24

**BOARD OF DIRECTORS**

Richard C. Leigh  
President  
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Vice President  
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Pat Alger  
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Hugh Prestwood  
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Maggie Cavender  
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Allen Reynolds  
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Allen Shamblin  
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Malcolm L. Mimms, Jr., Counsel  
Wyatt, Tarrant, Combs, Gilbert & Milton

Margaret Ann Warner  
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Delonte E. Touche  
Pat Rogers  
Executive Director

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Bonnie Morris

Thomas B. O'Grady

SESAC

C. Dianne Petty

SouthTrust Bank

G.R. Rick Archer Jr.

Third National Bank

D. Brian Williams

WMM AM FM

Bob Meyer

Dear Ms. Schrader,

The Nashville Songwriters Association International (NSAI) is a not-for-profit trade organization of over 4,000 members. More than 400 members belong to our Professional Division and write, or have written, the vast majority of popular Country music.

The NSAI Board of Directors has instructed the Legislative Committee to draft this letter responding to the hearing of Sept. 29 on the matter of Duration Of Copyright Term Of Protection, Docket No. RM 93-8. The matter of extension of the Termination Right (17 U.S.C., Section 203) was briefly addressed at the hearing.

While the NSAI Board of Directors wholeheartedly supports the possibility of extending the Duration Of Copyright Protection, the board would oppose legislation directed toward this end should that legislation contain any extension of The Right Of Termination.

Thank you for your time and attention in regards to this important matter. If you have any questions or comments, please feel free to contact us.

Sincerely,

Richard Leigh  
President

cc: Mary Levering

Dated  
No. RM  
75-8

GENERAL COUNSEL  
FEDERAL COUNCIL

Comment Letter

RM 93-8

No. 25

Dear Sirs,

RECEIVED

NOV 5 1975

I do not want the proposal to extend copyright twenty years to be submitted to Congress. I also do not want to revive the copy of films all ready in the public domain.

Extension of copyright is contrary to the purpose of copyright outlined in the U.S. constitution.

Public domain is important to many video companies, such as Good Times (Wal-Mart is their video) and Grapevine Video. Besides, documentaries have used public domain material.

The companies that will benefit from the copyright renewal have allowed some of our film heritage to be lost and have not allowed several movies to be seen by the public.

Public domain allows more of the "common man" to see the movies because the movies are more available to the public.

Thank You for Your Time,

Gordon Whitman  
511 Portland Ave.  
Beloit, WI 53511

Wednesday, October 27, 1993

US Copyright Office  
Library of Congress  
Washington DC

NOV 5 1993

Gentlemen:

RECEIVED

Comment Letter

RM 93-8

No. 26

I protest the proposed extension of copyright terms from author's life + 50 years to author's life + 70 years. We should be moving in the opposite direction. Copyrights are already much too long. The constitution says (Article 1, Section 8, Paragraph 8)

[The Congress shall have Power]

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

It doesn't say what "limited" means, but the first copyright law had a term of fourteen years.

Under present law, when the copyright for works created today expires, we will all be dead, as will most of our children. You are looking at extending the copyright term to include our grandchildren's lives as well. These terms are, for anyone alive today, effectively infinite, unlimited. I maintain that any term longer than the median adult life expectancy, perhaps forty years, is in effect unlimited, and violates the constitution.

It's hard to see that the extension serves the interests of anyone: It guarantees that any book written by a lesser author will have crumbled to dust long before the copyright expires. Very few published works have commercial value after fifty-six years, much less a century.

If the proposed term had been effect a century ago, Sherlock Holmes would still be under copyright.

I recently entered Jules Verne's "From the Earth to the Moon, and A Trip Around It" into the Internet, making it available to students across the country and around the world. Jules Verne wrote about fifty books, and most were translated into English, but most are very hard to find today. Libraries have copies of his most popular works, but the rest have disappeared. Jules Verne's work is permanently preserved on the network. His less fortunate contemporaries have vanished altogether, and their work is completely lost to us.

I can't enter Miss Marple or Bertie Wooster or Nero Wolfe or Robert Benchley. Many of these books are already crumbling on my bookshelves - they won't last another twenty years. Their authors will eventually fade from the pages of history.

Our libraries are already full of books, and when space is tight, older ones are given away or destroyed to make room for the new. At UCLA and UC Berkeley, the older journals are already being stored in off-campus warehouses. Portions of the University of Arizona's collection are in complete disarray.

Libraries are computerizing as fast as they can. Some time in the next twenty to forty years, the printing of low volume paper books will become unusual. (We'll still have Danielle Steele and Robert Ludlum in paperback, but low volume stuff like poetry and technical journals will be distributed over the network.) A few years after that, our paper heritage will be discarded, because noone can justify the expense of a building to house the older stuff.

The library may be able to scrape up the money to preserve a copy of the constitution in a climate-controlled box, but they don't have the money to provide a climate-controlled building for Horatio Alger's collected works. Much of this material could be saved if the libraries could pool resources and use centralized microfilming and computer scanning to make the material available over the network. But it's illegal.

Look at what's going to happen to newspapers: Old newspapers have much of the history of day-to-day life of many places across America. The New York Times will always be available on microfilm, but what about the Tucson Citizen? In 75 years the paper will be dust, even in their files. There goes our history.

It's getting harder and harder to tell when a copyright expires: The year has disappeared from the (c) marker. In another fifty years, it will be impossible to tell if a book is still copyrighted. Many publishers from the 1930s have vanished, and they are the only ones who know if an author has died. In many cases even the publisher will lose track of the author; there's just no way to tell. This is a terrible kind of law - you can only guess if you're in violation.

We even find instances of publishers making some minor addition or change in a public domain work, and claiming copyright on the whole work, as if new. This makes a mockery of the concept of public domain.

I object to the extension of copyrights for material that has already been published: The authors and publishers received a sufficient grant when the works were created. As a member of the public, I see no need to offer an additional copyright extension to works from twenty years ago. I've already surrendered 100 years of copyright - Now I'm asked to give away my grandchildren's rights as well.

To preserve the public's right of access to copyrighted material, there should be an obligation on the copyright holder to either provide copies on demand, or sell copying permissions. The absence of this obligation leads to some terrible abuses:

In 1933, Alan Cranston thought people should read Mein Kampf, to see what Hitler was really like. Cranston translated it, and published it in the United States. Hitler sued him for copyright infringement and won.

Most books are permanently out of print, but I'm not permitted to xerox the library copy. No one actually cares: the author is long dead, the publisher doesn't have any more copies, or ever plan a reprinting, but I can't copy the work. This is a shameful way for reasonable men to manage their affairs.

The Strens collection, in Calgary, Alberta, has a wonderful collection of old recreational math books, along with some serious ones. I needed some material from a book by Paul Poulet, which had a chapter about multiperfect numbers. The book is rare, even though it was published in 1930. They legally sent me a copy of Chapter 2. But I can't ask them to copy the whole book for me: It's copyright!

In 1968, I became interested in an obscure backwater of mathematics, the Dilogarithm function. Leonard Lewin had written a book about it in 1958, and the MIT Library had a copy in the basement. I wanted a personal copy, so I wrote to Lewin, who told me that it was out of print, and he had no more copies. I wrote to the publisher for permission to copy the book, but they never replied. They don't have to reply.

We've had TV news programs deliberately not preserved: The TV station wanted the programs destroyed after broadcast. There was an independent distributor who recorded the programs and sold them. The TV station bought a copy from the distributor, and then sued him for copyright violation. (They needed to buy the copy to register it!) It's hard to see how this promotes the Useful Arts; and destroying all copies of a work guarantees that it will never be available to the public, even after the copyright "expires".

Copyright is seriously interfering with teaching and research:

If I want to assemble a collection of math journal articles for my research on an obscure subject like multiperfect numbers, it's legal. But if I want to enter the articles into the network for other researchers to use, it's illegal. My friend and I have translated a Japanese article. We can't put it on the net: it would violate the Japanese article's copyright. The author wouldn't mind, he would be honored, but the journal owns the copyright. This situation is hamstringing our use of the new networking technology.

If I want to teach a course from journal articles: At one article per class period, I'm asking each student to pay \$200 for copying costs to the Copyright Clearance Center. This science was produced at public expense, funded by my tax dollars, but I'm legally limited in how much of it I can use to teach my own students! It's locked up by private publishers. We, the public, have been robbed.

The book Higher Transcendental Functions is copyright 1953 by McGraw-Hill. It was "Prepared at the California Institute of Technology under contract no. N6onr-211 task order XIV with the Office of Naval Research, project designation number: NR 043-015." A fine library edition is sold by the Krieger Publishing Company, with elegant covers, at an exorbitant price, \$50/volume. It's photocopied from the original edition.

Gradshteyn & Ryzhik, in 1963, collected a wonderful book of mathematical formulas, from mathematical works going back to 1748. I'd like to enter these in my computer, to make them available over the Internet. I can't do it alone; there are 1160 pages. If it weren't copyright, I could organize 100 people to do 12 pages each, and we could share the work and make it publicly available. But no, it's copyright. Perhaps the publisher, Academic Press, will do it, but probably not - they won't make any money if it's on the net.

Copyright is being used to promote business monopoly:

The courts seem disposed to recognize copyright as applicable to the design and user interfaces of computer programs. Intel has copyrighted the mnemonics of the computer instructions for one of their chips (like ABCD, for Add Binary Coded Decimal; the ABCD is copyrighted). The reason for this is to force people who write programs in this language to buy the Intel assembler program to do the conversion to a binary program, rather than a competing assembler. I call this restraint of trade, but they just call it copyright. Apple and Lotus have attempted to destroy competitors who write programs that are functionally equivalent, but better or faster. They are trying to own the training effort I invest in learning to use their software, and prevent me from buying competing software without incurring a retraining cost. This is an immoral use of copyright, and does nothing to promote the

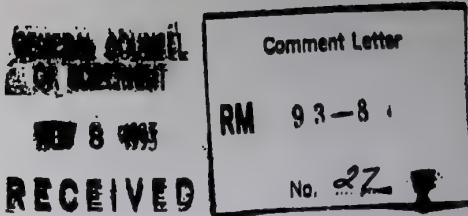
progress of science or useful arts. Some companies even claim copyright in the format of the data from their programs, and try to prevent other programs from using it. Our economy was built on interchangeable parts, and copyright is being used to destroy interchangeability. This is terrible public policy. These economic mistakes should not be continued for an additional twenty years by an extension of the copyright term. Articles of use should not be copyrighted at all.

With the same pen that you enrich Danielle Steele and the descendants of Agatha Christie, you erase from history the works of Paul Poulet and Emil Post and all the obscure poets of today.

Don't make things worse than they already are.

Rich Schroeppel  
1942 W. Camino Bajio, Tucson, AZ 85737 602-797-1679 rcs@cs.arizona.edu

RJ Sch



110 Orchard St.  
Cos Cob, CT 06807  
October 28, 1993

Dorothy Schrader  
General Counsel  
Copyright Office  
Library of Congress  
Dept. 100  
Washington, D.C. 20540

Re: Docket No. RM93-8

Dear Madam:

I strongly oppose the proposal to extend the copyright for works for hire from 75 to 95 years.

I also oppose any attempts to revive the copyrights on films that are already in the public domain.

Very truly yours,

*M. E. MacCumb*

Marion E. MacCumb

GENERAL COUNSEL  
OF CENSORSHIP

NOV 8 1993

RECEIVED

A. Lori Tucci  
11810 Louise Ave. Box A  
Granada Hills, California  
91344-2446

Comment Letter

RM 93-8

No. 28

10/27/93

Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100, Washington , DC 20540

Dear Mrs. Schrader,

I am a motion picture film editor and I have been trying to do my part to preserve our film heritage. I understand first hand the concerns facing our nations film archives, like UCLA Archives in Los Angeles Ca., with the overwhelming problem of film deterioration and rampant destruction occurring to our American vintage films. It is imperative that we assist in anyway possible to preserve these precious films. They are our history! Vintage films are time frozen on celluloid! We cannot film the past today and old films are our window into worlds now gone.

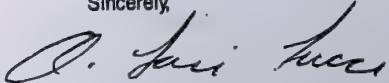
It is an unfortunate truth that many precious films are now lost or forgotten, slowly rotting away in a warehouse or garage somewhere, isolated from historians, documentary filmmakers and the American public. Sadly, this is often the fault of the original film's creator, copyright owner, or their heirs, who for various reasons do not understand, nor appreciate the historic nature of their works.

Mary Pickford, founder of United Artists, planned to destroy the negatives for all her early films. She didn't want to be remembered in curl! Those films would be gone now if not for the intervention of the late actress Lillian Gish, who talked Pickford out of the idea. Lillian Gish realized that great films can vanish due to the vanity or ignorance of their creators. For many films like Pickford's classics, awaiting the liberation of public domain is there only hope for survival.

As a film editor, I know that public domain films are the backbone of many stock footage film libraries and film archives. If public domain status is reversed, most of these companies will go out of business, the films they preserved will vanish forever. The result being that many future documentaries and television shows will never be made from the lack of previously available footage.

Therefore, as a film maker and a concerned citizen, I strongly oppose any attempts to revive the copyrights of films that are already in the public domain! I am also opposing the proposal to extend the copyright for works for hire from 75 years to 95 years. This is Docket No. RM 93-8. I think this proposal will do damage to many historic "silent era" film classics, like Buster Keaton's "The General", made in 1927, that has been preserved mainly because of it's public domain status. I feel that if a filmmaker doesn't care enough to renew his or her copyright, then the film should belong to the public.

Sincerely,



A. Lori Tucci  
(member of Union Local 776)

P.S. Please acknowledge my letter. If you wish to contact me, call (818) 363-4662.

Rose Marie Rupp  
1219 Douglass St.  
Alton, Ill.  
62002

RECEIVED

Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100, Washington, DC 20540

Dear Mrs. Schrader,

Comment Letter  
RM 93-8  
No. 29

Nov/2/93

I am a film collector and I have been trying to do my part to support the preservation of our film heritage. I understand the concerns facing our nations film archives, like UCLA Film Archives in Los Angeles Ca., with the overwhelming problem of film deterioration and rampant destruction occurring to our American vintage films. It is imperative that we assist in anyway possible to preserve these precious films. They are our history! Vintage films are time frozen on celluloid! We cannot film the past today and old films are our window into worlds now gone.

It is an unfortunate truth that many precious films are now lost or forgotten, slowly rotting away in a warehouse or garage somewhere, isolated from historians, documentary filmmakers and the American public. Sadly, this is often the fault of the original film's creator, copyright owner, or their heirs, who for various reasons do not understand, nor appreciate the historic nature of their works.

Mary Pickford, founder of United Artists, planned to destroy the negatives for all her early films. She didn't want to be remembered in curs! Those films would be gone now if not for the intervention of the late actress Lillian Gish, who talked Pickford out of the idea. Lillian Gish realized that great films can vanish due to the vanity or ignorance of their creators. For many films like Pickford's classics, awaiting the liberation of public domain is there only hope for survival.

I know that public domain films are the backbone of many stock footage film libraries and film archives. If public domain status is reversed, most of these companies will go out of business, the films they preserved will vanish forever. The result being that many future documentaries and television shows will never be made from the lack of previously available footage.

Therefore, a concerned citizen, I strongly oppose any attempts to revive the copyrights of films that are already in the public domain! I am also opposing the proposal to extend the copyright for works for hire from 75 years to 95 years. This is Docket No. RM 93-8. I think this proposal will do damage to many historic "silent era" film classics, like Buster Keaton's "The General", made in 1927, that has been preserved mainly because of it's public domain status. I feel that if a filmmaker doesn't care enough to renew his or her copyright, then the film should belong to the public.

Sincerely,

Rose Marie Rupp

P.S. Please acknowledge my letter.

~~GENERAL COUNSEL~~  
~~FOR GOVERNMENT~~

NOV 9 1993

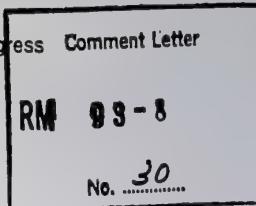
November 2, 1993

RECEIVED

Ms. Dorothy Schrader  
General Counsel  
Copyright Office, Library of Congress  
Department 100  
Washington, D.C. 20540

REF: Docket #RM93-8

Dear Ms. Schrader:



I am writing as a representative of Southwest Film/Video Archives to express our opposition to the proposal to extend copyright on works for hire from 75 to 95 years and to revive copyright on films that are already in the public domain. Southwest Film/Video Archives is a non-profit organization dedicated to preserving works on film. An important aspect of our work is PUBLIC ACCESS to films. The original idea of copyright outlined in the United States Constitution is that after the artist has benefitted financially from his/her creation, art should belong to the public. If copyright is extended and made retroactive to works already in the public domain, nearly all of the films ever made will be inaccessible to the public.

At Southwest Film/Video Archives, we have preserved approximately 100 films produced by African-American filmmakers, nearly 40 from the 1930's - 1950's. Most of the films originally from that era have been lost or destroyed. Of those that remain, the largest collection in the world is here at SWFVA. Many of the films were never copyrighted, and all now fall within the public domain. If these titles are reverted to copyright status, we will be unable to share them with the public. The original filmmakers are deceased and will not benefit financially from these films reverting to copyrighted status. The history of African-American artists in America has been sorely neglected. We absolutely must be able to share this heritage of African-American life and culture to Americans today and in the future. Extending copyright to 95 years will certainly benefit the already wealthy Hollywood studios. If we think only of passing legislation to benefit the well-to-do and a system that produced primarily white American images, what are we saying about our country and our culture, that these are the only images worth benefitting? This proposed legislation is WRONG for America and its public.

Sincerely,



Rebecca Rice  
SWFVA

cc: David Pierce  
Senator Dennis DeConcini, Chairman  
Representative William J. Hughes, Chairman  
Senator Phil Gramm  
Senator Kay Bailey Hutchison  
Representative Eddie Bernice Johnson  
Representative Sam Johnson

11/21/93

Dear Sir,

I am referring to docket NO.-R M 93-8

I am fully opposed to this 95 years Copyright Law. Leave the copyright at 25 years!

I am fully opposed any attempts to revive the copyrights of all films, are already in public domain. Many of these motion pictures were made in the 1800's through 1960's ,are Classic films. Including documentaries,educational.

Many of these motion pictures went to Archives, have preserved the Studio-owned titles with Federal Funds,all of these films in 35 mm,16mm, to the public domain can see these wonderful works.

Allow 16 mm film libraries to rent these films to schools, universities, homes, etc.

Not let television and cable to broadcast these films. Let schools,universities for educational use.

The film collectors around the country,World,who have brought these films. They should own the copyrights, allow to have and ownlibraries,for other uses.

Without repercussions from the Movie Studios.

Yours truly,

*Harvey Halder*

Harvey Halder



NOV 9 1993

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Comment Letter
RM 93-8
No. 31

Richard Borowy  
P.O. Box 2608  
Supulava, CA.  
91393

Comment Letter

RM 93-8  
No. 32

Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100, Washington, DC 20540

11/2/93

NOV 9 1993

Dear Mrs. Schrader,

RECEIVED

I am a film collector and I have been trying to do my part to support the preservation of our film heritage. I understand the concerns facing our nation's film archives, like UCLA Film Archives in Los Angeles Ca., with the overwhelming problem of film deterioration and rampant destruction occurring to our American vintage films. It is imperative that we assist in anyway possible to preserve these precious films. They are our history! Vintage films are time frozen on celluloid! We cannot film the past today and old films are our window into worlds now gone.

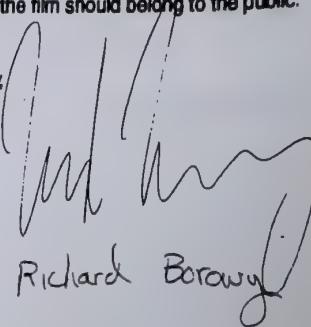
It is an unfortunate truth that many precious films are now lost or forgotten, slowly rotting away in a warehouse or garage somewhere, isolated from historians, documentary filmmakers and the American public. Sadly, this is often the fault of the original film's creator, copyright owner, or their heirs, who for various reasons do not understand, nor appreciate the historic nature of their works.

Mary Pickford, founder of United Artists, planned to destroy the negatives for all her early films. She didn't want to be remembered in curl! Those films would be gone now if not for the intervention of the late actress Lillian Gish, who talked Pickford out of the idea. Lillian Gish realized that great films can vanish due to the vanity or ignorance of their creators. For many films like Pickford's classics, awaiting the liberation of public domain is there only hope for survival.

I know that public domain films are the backbone of many stock footage film libraries and film archives. If public domain status is reversed, most of these companies will go out of business, the films they preserved will vanish forever. The result being that many future documentaries and television shows will never be made from the lack of previously available footage.

Therefore, a concerned citizen, I strongly oppose any attempts to revive the copyrights of films that are already in the public domain! I am also opposing the proposal to extend the copyright for works for hire from 75 years to 95 years. This is Docket No. RM 93-8. I think this proposal will do damage to many historic "silent era" film classics, like Buster Keaton's "The General", made in 1927, that has been preserved mainly because of its public domain status. I feel that if a filmmaker doesn't care enough to renew his or her copyright, then the film should belong to the public.

Sincerely,

  
Richard Borowy

P.S. Please acknowledge my letter.

DISTRICT OFFICE:  
ROCKFORD STATE OF ILLINOIS BUILDING  
200 SOUTH WYMAN STREET, SUITE 303  
ROCKFORD, ILLINOIS 61101  
815/987-7190  
FAX 815/987-7197

SPRINGFIELD OFFICE:  
2078-K STRATTON BUILDING  
SPRINGFIELD, ILLINOIS 62706  
217/782-1184



COMMITTEES:  
AGING  
ELECTIONS & STATE GOVERNMENT  
ADMINISTRATION  
ENVIRONMENT & ENERGY  
FINANCIAL INSTITUTIONS

ILLINOIS HOUSE OF REPRESENTATIVES  
**MICHAEL V. ROTELLO**  
STATE REPRESENTATIVE • 69TH DISTRICT

November 3, 1993

~~RECEIVED  
BY POSTAL CARRIER~~

NOV 10 1993

Comment Letter

RM 93-8

No. 33

RECEIVED

Ms. Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100  
Washington, D.C. 20540

Dear Ms. Schrader:

I am writing to express my opposition to the U.S. Copyright Office endorsing a proposal that would extend by 20 years the current U.S. Copyright term for corporate works. As a state legislator and avid collector of classic films, I see no justification for this extension.

The purpose of copyright as granted to Congress by the United States Constitution is "to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Copyright terms are limited to provide protection to the creators; however, they are also limited to allow for the works to eventually be made available to the public so that they can be enjoyed by all.

It is a great tragedy that many fine works are not in the public domain but are stored in inappropriate environments that allow their deterioration. The proposed extension would only further this process and will contribute to the near complete inaccessibility of a large portion of our motion picture heritage.

Due to the reasons I have discussed and the obvious lack of any real public benefit other than the serving of corporate interests, I urge the Copyright Office to take a position opposing the extension of current Copyright terms. Such a position will assure that a much larger amount of film, music, and literary history will become available to the public; to be enjoyed by all for their educational and historical value.

I respectfully request that this letter be recorded as part of the written submissions of the September 29, 1993, hearings.

Sincerely,

A handwritten signature in black ink that reads "Michael V. Rotello".

Michael V. Rotello  
State Representative  
69th District

MVR:pb

~~EX-3~~ COMMISSION  
OF COPYRIGHT

NOV 15 1993

RECEIVED

103 Highland Avenue  
Rensselaer, NY 12144  
November 8, 1993

Dorothy Schrader, Esq.  
General Counsel  
Copyright Office  
Library of Congress  
Dept. 100  
Washington, DC 20540

Comment Letter

RM 93-8

No. 34

Re: Docket # RM 93-8  
Copyright Extension

Dear Ms. Schrader,

I am writing to object to the proposed extension of copyright protection to life plus seventy years for works created by an individual and to ninety-five years for works created for hire (most notably films).

The expiration of copyright allows publishers and the distributors of films and videocassettes to put before the public works which have a limited appeal and which the copyright owners (if known) have little interest in making available.

While I object generally to any extension of copyright beyond its present limits, I think the extension of copyright protection for films to practically a century is particularly objectionable. The corporations which own the copyrights to films made in the silent era, which if the law remains unchanged will shortly come out of copyright, have an almost abysmal record of stewardship when it comes to the preservation of these films and allowing the public to have access to them. As they have not seen fit to make available to the public works created three-quarters of a century ago, I fail to see what public good would be served by extending their proprietary rights for another score of years.

Film used to be described as "the chained book of the twentieth century". The coming of the videocassette player has largely changed that. I urge the Library of Congress not to take part in an effort to keep the chains on films which the owners do not see fit to make available for an additional twenty years.

Very truly yours,

*Patrick M. Harrigan*  
Patrick M. Harrigan

# Athletes & Business For Kids

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November, 1993

GENERAL COUNSEL  
 OF GOVERNMENT

Comment Letter

NOV 18 1993 RM 93-8

RECEIVED

No. 35

Ms. Dorothy Schrader  
 General Counsel  
 Copyright Office  
 Library of Congress, Department 100  
 Washington, D.C. 20540

Dear Ms. Schrader,

This letter is in reference to document number RM93-8 regarding the extension of copyright laws. Although the rights of artists must be protected, at least during their lifetime, I am concerned about the extension of copyright laws and the removal of films already in the public domain.

I think we must be concerned about the power of large media conglomerates that own films, own the delivery of the films, own the news that comments on any negative effects of the films and videos and books. We should not add to the control that these large corporations have over public information and the public's creative trust. They already have too much power.

If we were talking about artists' rights it would be one thing but in this case we are talking about the rights of huge, often abusive, media conglomerates such as Time-Warner that produces mostly R-rated movies and produces books like the recent hard-core, pornographic book featuring Madonna in various bizarre acts. Time-Warner produces sixty per cent of the recorded music our children listen to including singers such as AC-DC, Motley Crue, Prince and Madonna whose influence is very negative on our children. Time-Warner produces twenty-two of the sitcoms on television. They own twenty-two per cent of Cable News Network, all of HBO and Cinemax and several magazines such as Time, Business Week and People.

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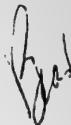
Ms. Dorothy Schrader  
November, 1993  
Page 2

These huge vertically-integrated financial empires are pumping a lot of very unsavory entertainment material into our children and we do not need to give them even more control. There are many who are concerned that they want to restrict the distribution of the older, out-of-copyright films such as "It's a Wonderful Life," films whose messages are so positive that they need to be widely distributed to new generations. I am against the argument that these big corporations should have even more control than they now have.

Sincerely,

Brad Curl

BC:ec

A handwritten signature in black ink, appearing to read "Brad Curl".



November 8, 1993

Dorothy Schrader  
General Council  
Copyright Office  
Library of Congress,  
Dept. 100  
Washington, D.C. 20540

U.S. GOVERNMENT  
BY CONVENTION

NOV 15 1993

RECEIVED

Comment Letter

RM 93-8

No. 36

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101 North Tenth

Fargo, North Dakota

58107-2012

(701) 237-4850

Fax: (701) 234-9680

With offices in:

Minneapolis, MN

Laramie, WY

In my job as producer of video and TV for Flint Communications, I am a frequent user of public domain materials, such as newsreels, old educational films, non-theatrical business films and documentaries. I also trade public domain motion pictures for commercial time on TV stations around the country who use my collection to build up a permanent program library in much the same way as radio stations build up libraries of recorded music.

Recent copyright extensions have already affected this activity, causing fewer and fewer works to fall into public domain as a result. Without public domain, I would have to cease this activity altogether. I have built up this service over the years secure in the fact that our government has mandated these works as public property for the use of all.

So it with understandable horror and dismay that I discover that big money Hollywood interests have succeeded in persuading their friends in the U.S. Copyright office to consider extending the copyright status of films, books and music still further, blatantly disregarding the public interest in preserving this cultural heritage for all in favor of the financial self-interest of the few, and to make things worse, they are considering restoring full copyright protection to works which have historically been in the public domain, disregarding apparently even their own publications on the matter - ("works in the public domain cannot be protected by copyright"- Circular R15T)

Copyright of creative works was originally inaugurated to stimulate film makers, and composers into producing viable works of art, by guaranteeing their authors a reasonable financial return for their efforts. This philosophy extends to patents as well. However, unlike patents which enforce this protection for seventeen years, copyright extensions have turned this incentive into a means for present owners of these works, in many cases far removed from the original authors, to use this legal leverage for their own exclusive financial gain, almost indefinitely, even though they had no part in the creative responsibility for these works whatsoever.

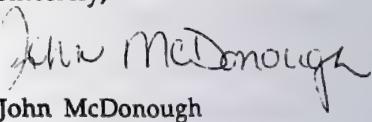
If this change in the present copyright law were carried out, would not consistency in law demand that creators or owners of patents of electricity, steam power, and the like, would also be able to have their patents restored to full enforceability as well, and subject to whatever restrictions their owners would require for their own ends to the unfortunate users of these formally public domain inventions?

Implementations of such a travesty of law would cause such a hue and cry of injustice that such self-serving examples of outright greed would be laughed out of any serious judicial proceedings. However this is precisely what Hollywood producers would like very much to do to the thousands of people involved in the dissemination of public domain works in this country, not to mention rendering hundreds of thousands of public domain film collections in public TV stations, colleges and libraries in violation of copyright laws if they are used.

It is totally unnecessary to point out how copyright owners of motion picture works, have consistently succeeded in thwarting public interest in this national treasure for their own ends. The many examples of film masterpieces disintegrating into dust, with no access to them even by responsible organizations, or the deliberate withholding of film titles beloved to the general public for fear of competition by inferior remakes, are far too numerous to mention.

Without hesitation, I suggest, or even insist, that Congress follow the excellent example of the registrars of patents, and declare all motion pictures, music recordings, and any other works of creative artistic endeavor, after an initial period of seventeen or even twenty eight years, to be permanently in the public domain, for the enjoyment, education and artistic pleasure of all the people of our great nation.

Sincerely,

  
John McDonough

November 10, 1993

Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100, Washington, D. C. 20540

GENERAL RECOMMENDATION  
OF COPYRIGHT OFFICE

NOV 15 1993

Comment Letter

RM 93-8

No. 37

RECEIVED

Dear Ms. Schrader,

This letter is in response to Docket No. RM 93-8, the Proposal for Copyright Extension. This proposal would extend the copyright on motion pictures from 75 years to 95 years, longer than any nation in the world. Follow up proposals are expected to request resurrection of copyright on films that have already passed into the public domain.

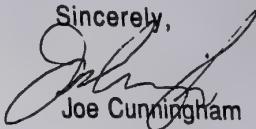
This proposal would benefit a few companies with no benefit to the public. The United States government has always respected the concept of public domain as a means of disseminating works and ideas to the general public after the producers have had a reasonable period to profit from their work.

In countless cases motion picture studios have lost or destroyed their copies of many films. In other cases the studio's prints have decayed due to neglect. Many films exist today because they have been preserved and restored by the Library of Congress and private film archives, often with Federal funds. Yet these films, which now exist due to Federal funding, can not be seen by the general public since they are still covered by copyright. In the case of older films, the studios often will not make them available in any form. Few older films are released on video, nor will studios generally allow private screenings.

As these older films pass into public domain, they can become available

to the general public, as was originally intended by Congress when it established copyright law. It is my belief that 75 years is a fair and adequate period for motion picture copyright, and extending the term of copyright is not in the interest of the American people. Please don't let our film heritage stay locked in the vaults forever! Please do not support the Proposal for Copyright Extension or any proposal to resurrect copyrights that have already expired. Thank you for your time.

Sincerely,



Joe Cunningham  
509 Concord Lane  
Carmel, IN 46032

Telephone (215) 384-1683

**COATESVILLE ARMY AND NAVY STORE, INC.**

228 EAST LINCOLN HIGHWAY  
COATESVILLE, PENNSYLVANIA - 19320

Nov. 11, 1993

Dorothy Schrader, General Council

Copyright is the subject. Please reffer to Docket number RM93-8 . I oppose the proposal to extend the copyright for works for hire from 75 to 95 years. Also I oppose any attempts to revive the copyrights of films that are already in the public domain.

Respectfully Yours

*Martin J. Skolnik*

Martin J. Skolnik

GENERAL COUNSEL  
OF COMMERCE

NOV 15 1993

RECEIVED

Comment Letter

RM 93-8

No. 38

Nov. 8, 1993

Dorothy Schrader  
Copyright Office  
Library of Congress  
Washington, D.C. 20540

George H. Shalvey  
613 Kearny Avenue  
Kearny, NJ 07032

Comment Letter

NOV 18 1993

RM 93-8

RECEIVED

No. 39

Dear Ms. Schrader -

I am writing you concerning Docket # RM 93-8, opposing the proposal to extend the copyright for works for hire from 75 to 95 yrs. I also oppose any attempts to revive the copyrights of materials that are already in public domain.

Personally, I have found the copyright system to be so binding that it has indeed hampered even my efforts to use an educational television series from the 70's (Public Broadcasting System) to learn American Sign Language.

Thanks very much for reading this! Sincerely, George Shal

GENERAL COUNSEL  
A. F. C. CORPORATION

Comment Letter

NOV 17 1993

RM 93-8

No. 40

Dorothy Schader, General Counsel  
Docket No. RM 9

RECEIVED

I Oppose extending motion picture copyrights

I Vehemently oppose retroactively copyrighting motion pictures already  
in the public domain

The proposal of a 20 year extension of copyright for works for hire, such as motion pictures, from 75 to 95 years will contribute to the near complete inaccessibility of a large portion of our motion picture heritage. This proposal should not be submitted to or passed by Congress. This is because to do so is contrary to the purpose of copyright outlined in the United States Constitution. It benefits a handful of large companies, with no public benefit. These are the same companies that allowed so much of our film heritage to be lost in the first place. Over 70 % of movies made prior to 1930 have been forever lost due to neglect of the copyright owners. What surviving prints left were donated to various film archives. These films ( still studio owned ) are preserved with federal funds, yet the films are unavailable to the public. These films have great historical importance and educational value. They should be allowed to fall into the public domain. The united states already has the longest period of motion picture protection in the world

Public domain is used to create new works, such as documentaries and educational films. CNN and other news agencies regularly uses public domain footage. In *Stewart v. Abend*, a landmark copyright case, the Supreme court stated that copyright:

"Serves a higher purpose than just providing income to the authors. By limiting the term of protection the public will not be permanently deprived of the fruits of an artists labors"

There is also talk of retroactively extending copyrights back 95 years. To do this would be a crime as it would eliminate all public domain film from use and accessibility. The public policy of this country has always been to provide limited protection for a limited time to give creators' incentives to create additional works. At the end of that limited term of protection of creative works fall into the public domain for the widest possible dissemination. This is the same philosophy behind the 17 year patent protection.

Public domain means that creative works are more widely distributed, and the wide availability of ideas contributes to creativity, benefiting everyone. It is due to the worldwide public domain status of Gaston Leroux's 1910 novel THE PHANTOM OF THE OPERA\* that there are three completely different stage musicals touring the United States this year.

#### Because of public Domain,

Frank Capra's IT'S A WONDERFUL LIFE (1946) became a holiday classic only after falling into the public domain and was widely seen for the first time. Other movies have been restored and saved for future generations because their copyright term had expired. Public domain status is the reason, as individuals could legally work to preserve a film.

Extending the copyright time would guarantee that hundreds of films would be lost from neglect unable to be saved due to denied public access. Films that long ago were abandoned by their creators.

Retroactively extending copyrights back 95 years would be a horrendous blow to the creative, historical and educational rights of Americans.

Tim Ford  
Atlanta GA.

Tim Ford

# Festival Films

6115 Chestnut Terrace  
Shorewood, MN 55331  
phone/fax (612) 478-2172

Nov. 16, 1993

Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100  
Washington, DC 20540

GENERAL COUNSEL  
RECEIVED

NOV 18 1993

RECEIVED

Comment Letter	
RM	93-8
No. 41	

Dear Dorothy Schrader,

I was appalled to hear about Docket RM 93-8, which proposes to extend the copyrights on motion pictures from 75 to 95 years. It is only 50 years in Japan! I was even more appalled at the suggestion to extend copyright protection to many domestic and foreign films which have been in the public domain for many years!

This proposal can only serve special interest groups who stand to profit by re-claiming and re-exploiting a large segment of our American heritage that has already been declared to be in the public domain. In most cases these groups had nothing to do with the production of the films 75 or more years ago. A retroactive law would encourage lawyers to pay the great granddaughter of the cousin of D.W. Griffith a token sum to eventually own "The Birth of a Nation," a film which the courts declared to be in the public domain over 20 years ago. Mr. Griffith had no direct descendants who deserve, if anyone, to benefit financially from his 1915 pioneer film masterpiece at this late date.

A retroactive copyright law would cause great harm to many colleges and libraries who have large 16mm public domain film collections so that their students can study, appreciate and enjoy motion pictures the way they were meant to be seen - on movie screens with audiences. Festival Films has sold public domain 16mm film classics to such organizations for over 20 years and I can assure you that any new law saying these films are no longer public domain would be devastating to many reputable institutions.

PUBLIC DOMAIN IS A JUST AND FAIR POLICY. PLEASE DON'T LET IT BE STOLEN AWAY FROM THE AMERICAN PEOPLE!

Sincerely,

Ronald A Hall

Ronald A. Hall, President FESTIVAL FILMS

THOMAS W. HOLLAND

15475 Loom Place  
Sherman Oaks, California 91403  
(818) 995-0410

November 17, 1993

Ms. Dorothy Schrader, General Counsel  
Copyright Office  
Library of Congress - Department 100  
Washington, DC 20540

GENERAL COMMITTEE  
OF COPYRIGHTS

NOV 18 1993

Comment Letter

RM	93-8
No. 42	

RECEIVED

Re: Docket No. RM 93-8  
Copyright Extension Legislation

Dear Ms. Schrader:

I am writing to you to voice my extreme opposition to any attempts to resurrect the copyrights of films that have already entered the public domain, as is currently being proposed.

As a long-time executive in the motion picture and television business, I personally know that re-copyrighting the films and TV shows now in the public domain will only serve to destroy a huge number of small businesses allied to the industry and benefit a handful of large studios.

For instance, did you know that everyone's favorite Christmas movie, IT'S A WONDERFUL LIFE, was virtually a forgotten film until it entered the public domain? Thanks to the film's P.D. status the movie became a classic, generating hundreds of jobs for people who were able to legally use footage from the picture for "making of" TV shows, home videos, books, etc. This is only one example.

The large studios who will benefit from a change in the current copyright law have no interest in the public benefit, as evidenced by their horrific history of protecting their classic films. Neither are they interested in the thousands of hard-working people in small companies who will be put out of work if this law passes. A change in the laws regarding the copyright status of films currently in the public domain is not really a matter of protecting someone's rights... it's a matter of making more money for the big studios, enabling them to "lock out" small producers and distributors.

The proposed 20 year extension of copyright for works for hire, such as motion pictures, to 95 years will contribute to the near-complete inaccessibility of a large portion of our entertainment history.

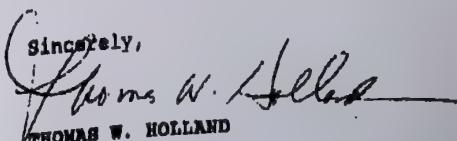
Nov. 18, 1993 12:16 AM P02

Ms. Dorothy Schrader  
Library of Congress  
November 17, 1993  
page Two of Two

This proposal should not be submitted to Congress. The reasons include:

1. Works in the public domain are used to create new works, such as documentaries and educational films.
2. A change in the copyright laws would make films of educational and historical importance virtually impossible to see without paying high fees to the major studios... if they are made available to the public at all.
3. Public archives have preserved former studio-owned titles with Federal funds, yet they would not be available to the public without license from the major studios.
4. These are the same companies that allowed so much of our priceless film heritage to be lost in the first place.
5. It would benefit a handful of large corporations (which are increasingly foreign-owned... Columbia=Sony; Universal MCA=Matsushita; Warner Brothers=Toshiba, etc.) with absolutely no public benefit.
6. It is contrary to the purpose of copyright as outlined in the United States Constitution.
7. The proposed U.S. Copyright extension is not compatible with the European proposal.

Ms. Schrader, for the sake of future generations I urge you to strongly oppose any change to our current copyright laws regarding films which have already entered the public domain.

Sincerely,  
  
THOMAS W. HOLLAND

cc: Sen. Dennis DeConcini  
Sen. William J. Hughes

Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Dept. 100, Washington D.C. 20540

GENERAL COUNSEL  
OF COPYRIGHT

November 15, 1993

NOV 24 [REDACTED]

Comment Letter

RM 93-8

No. 43

RECEIVED

Re: Docket No. RM 93-8

It is my understanding that there is a proposal to extend copyright terms of motion pictures from 75 years to 95 years. Further that copyrights be returned to motion pictures currently in public domain.

Not only as a collector of old movies in video form but as a matter of logic, this is silly. The creators of anything -the people I presume copyrights are supposed to protect- aren't going to be around after 95 years.

All this proposal would do, that I can see, would be to increase to cost of reproduced movies to consumers. I therefore protest this proposal most strongly.

Thank you,



Dennis A. Luettke  
6204 N. Cemetery Road  
Cass City, Michigan 48726

SANTA CLARA UNIVERSITY

RECEIVED

OCT 25 1993

SCHOOL OF LAW

(408) 554-4090

RECEIVED SECTION

NOV 15 1993

October 21 1993

GENERAL COUNCIL  
OF LIBRARIES

NOV 18 1993

Comment Letter

RM 93-8

No. 44

Copyright Office  
Library of Congress  
Department 100  
Washington, D. C. 20540

RECEIVED

RE: Proposed increase of the copyright term To Life Plus 70 Years.

Ladies and Gentlemen:

I am one of the copyright professors who have joined in the commentary prepared by Dennis S. Karjala. In addition to those comments, I would like to add a short statement of some additional views of my own.

First of all, individual authors already have a significant incentive under the present law to publish their works. I do not think that an additional 20 year period to be enjoyed by their heirs is necessary in order to encourage people to produce the valuable works that we hope will be forthcoming. Thus, the basic constitutional interests and the specific intentions of Congress to create incentive are already very firmly served by the current term.

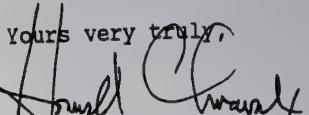
Secondly, in the current law, literary works which are clearly very functional are very fully protected by copyright. See, for example, Atari Games Corp. v. Nintendo of America, 975 Fed.2d 832, at 939; Computer Law Associates International v. Altai, 23 USPQ 2d 1241 and Sega Enterprises Ltd. v. Accolade, Inc., 977 Fed.2d 1510. Works, like software, that control a computer or process ought not to enjoy an overly long period of copyright protection. While many of these programs are owned by corporations and thus would not be affected by the proposed amendment, it is indeed possible that an individual may own some very important and fundamentally utilitarian piece of programming. Thus, with regard to the technological copyrights, I think it is not wise to increase the term of years.

Thirdly, I am very concerned with uniformity. In this area, I depart somewhat from the views which Professor Karjala has expressed. I think I put a higher premium on the need for uniformity in a modern world. But from what I understand, the

point in time has not yet been reached where uniformity in this area is demanded as is the case with Patent Law. I am not aware, for example, of any proposed international covenant which would extend the period to lifetime plus 70 years. If those facts are available, I think I would take a somewhat different view. That is, I think that international consistency is very important. At this point, I take it that there is simply an emerging debate. In which case, the United States can take a voice in favor of preserving a shorter term, namely, lifetime plus 50 years.

I thank you very much for your attention to these views.

Yours very truly,

  
Howard C. Anawalt

Professor of Law

HCA:gg

cc: Professor Dennis S. Karjala  
Arizona State University  
College of Law  
Tempe, AZ 85287-7906

November 2, 1993

S. Dorothy Schrader  
General Counsel  
Copyright Office  
Library of Congress  
Department 100  
Washington, DC 20540



NOV 18 1993

RECEIVED

Comment Letter
RM 93-8
No. 45

Dear Ms. Schrader,

As a longtime film historian and chief researcher for American Movie Classics cable network, I must voice my protest in regards to the extension of the copyright law so that films could be protected for as much as 95 years. Once a film falls into Public Domain, that should be the end of its protection insofar as its makers are concerned.

Docket No. RM 93-8 would make illegal the possession of all those Public Domain films which have long passed the statutes of protection. To go back and renew these copyrights after so many years is incomprehensible. Numerous lawsuits would ensue, some businesses which depend upon PD material would cease to exist and only chaos would result. Rather than protecting the interests of, in many cases, descendants of those who made these films (many of the filmmakers are deceased and the production/distribution companies long out of existence), hardships would be heaped upon those who sincerely enjoy and make some living from these old films. How is it possible to say that something that was legal for fifty years or more is now to be considered the property of a very select few?

Certainly the makers of today's films would have little or nothing to gain from the extending of copyrights on films made decades ago. There really isn't enough money to be made from these older pictures to begin with, so why would they care if a D. W. Griffith film of 1911 is now back under copyright protection? Only those who can truly appreciate these films would be affected. Would all of the film archives now have to pay fees for films which they've owned for decades? The problems arising from this proposal would be so staggering as to make any further consideration unnecessary.

Among the many who join me in the wish that this proposal be abandoned are William K. Everson, the world's foremost film authority, and Joe Franklin the king of nostalgia. They and I hope that films will be preserved by those who can best appreciate them, without restriction. My sincere hope is that such will be the outcome.

With sincere concern,

*John Cocchi*

John Cocchi  
613 68th Street  
Brooklyn, New York 11220

cc: M. Lee  
S. Schlesinger  
M. Kretzinger  
B. Aspinwall  
J. R. G.  
E. Saks

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Who is better?"

NOV 19 1993

Comment Letter  
RM 93-8  
No. 46

dated and  
referred to OGC/  
to include with  
Comments. 10/13

## RECEIVED

## MEMORANDUM

TO: Mary Levering, Acting Register of Copyrights  
FROM: Paul Skrabut (20) 700-1173 (Law Office of Palumbo & Son)  
DATE: October 7, 1993  
SUBJ: Aftermath of the Life Plus Seventy Hearings in the  
Copyright Office

### BACKGROUND

After Hal David testified at the hearings on September 29 a few matters arose that I have discussed with some members of your staff and wish to share with you.

As you will recall, the Assistant General Counsel of the Copyright Office, Marilyn Kretzinger, asked about the possibility of applying some of the royalty money from an additional duration period to the National Endowment for the Arts. I note, parenthetically, that many of the European nations have such a system and that legislation was introduced in the Senate a few years ago to extend the duration of copyrights with the resulting revenue to be applied for such a public purpose.

In addition, one panel member asked a question about using some of the new copyright revenues to pay the costs of maintaining and restoring movies at the Library.

I am aware that one movie studio threatened to destroy its inventory of old movies from the 1930's and 1940's unless the Library of Congress wanted to take them and restore them.

The Library did so (I believe at an average cost of over \$20,000 a-piece), and now the movie studio, which insisted on keeping the copyrights, has occasionally denied the Library permission to show the films.

### DISCUSSION

Now that new world-wide markets for old movies are flourishing, the spokesperson for the movie industry at the Hearing graciously offered to take back all the films which the Library has restored to save the Library the costs of maintaining them.

Last year The Library of Congress tried to get legislation enacted to allow it to collect service fees from users. Several groups who want Life plus 70 passed opposed the bill and stopped it, although there have been discussions about reviving it with the opposing groups and Library staff.

Another factor to be considered in this question is the precedent set in the DART legislation which passed last year. That bill allowed the Copyright Office to deduct the administrative costs for handling the revenue generated by the new royalty.

One panel member mentioned that Life plus 70 would create additional administrative costs for The Copyright Office.

#### CONCLUSION

Although I do not know what the collection mechanism would be, I think it is possible that someone could recommend a portion of the revenues from a longer copyright duration go to pay for the Library's administrative costs.

In a time of severe budget constraints, there could be considerable political benefit to the public servant or organization that received credit for initiating such a proposal.

**AUDIO HOME RECORDING ACT OF 1992**

SEPTEMBER 17, 1992.—Ordered to be printed

Mr. BROOKS, from the Committee on the Judiciary,  
submitted the following

**R E P O R T**

[To accompany H.R. 3204 which on August 2, 1991, was referred jointly to the Committee on the Judiciary, the Committee on Energy and Commerce, and the Committee on Ways and Means]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3204) to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Audio Home Recording Act of 1992".

**SEC. 2. IMPORTATION, MANUFACTURE, AND DISTRIBUTION OF DIGITAL AUDIO RECORDING DEVICES AND MEDIA.**

Title 17, United States Code, is amended by adding at the end the following:

**"CHAPTER 10—DIGITAL AUDIO RECORDING DEVICES AND MEDIA**

“<sup>Sec.</sup>  
“1001. Definitions.  
“1002. Incorporation of copying controls.  
“1003. Obligation to make royalty payments.  
“1004. Royalty payments.  
“1005. Deposit of royalty payments and deduction of expenses.  
“1006. Entitlement to royalty payments.  
“1007. Procedures for distributing royalty payments.  
“1008. Prohibition on certain infringement actions.  
“1009. Civil remedies.  
“1010. Arbitration of certain disputes.

physically integrated unit or as separate components, the royalty payment shall be calculated as follows:

(A) If the digital audio recording device and such other devices are part of a physically integrated unit, the royalty payment shall be based on the transfer price of the unit, but shall be reduced by any royalty payment made on any digital audio recording device included within the unit that was not first distributed in combination with the unit.

(B) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have been distributed separately at any time during the preceding 4 calendar quarters, the royalty payment shall be based on the average transfer price of such devices during those 4 quarters.

(C) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have not been distributed separately at any time during the preceding 4 calendar quarters, the royalty payment shall be based on a constructed price reflecting the proportional value of such device to the combination as a whole.

(3) LIMITS ON ROYALTIES.—Notwithstanding paragraph (1) or (2), the amount of the royalty payment for each digital audio recording device shall not be less than \$1 nor more than the royalty maximum. The royalty maximum shall be \$8 per device, except that in the case of a physically integrated unit containing more than 1 digital audio recording device, the royalty maximum for such unit shall be \$12. During the 6th year after the effective date of this chapter, and not more than once each year thereafter, any interested copyright party may petition the Copyright Royalty Tribunal to increase the royalty maximum and, if more than 20 percent of the royalty payments are at the relevant royalty maximum, the Tribunal shall prospectively increase such royalty maximum with the goal of having no more than 10 percent of such payments at the new royalty maximum.

(b) DIGITAL AUDIO RECORDING MEDIA.—The royalty payment due under section 1003 for each digital audio recording medium imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 3 percent of the transfer price. Only the first person to manufacture and distribute or import and distribute such medium shall be required to pay the royalty with respect to such medium.

#### **§ 1005. Deposit of royalty payments and deduction of expenses**

The Register of Copyrights shall receive all royalty payments deposited under this chapter and, after deducting the reasonable costs incurred by the Copyright Office under this chapter, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest under section 1007. The Register shall submit to the Copyright Royalty Tribunal, on a quarterly basis, such information as the Tribunal shall require to perform its functions under this chapter.

The

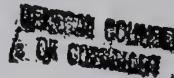
# KEATON CHRONICLE



PUBLISHED BY THE DAMFINOS: THE BUSTER KEATON APPRECIATION SOCIETY

November 13, 1993

Dorothy Schrader  
General Counsel  
Copyright Office  
Library of Congress  
Department 100  
Washington, DC 20540



RECEIVED

Comment Letter	
RM	93-8
No. 47	

Docket No. RM 93-8

Dear Ms. Schrader,

I have just read about the proposal to extend copyright for works for hire from 75 to 95 years and am strongly opposed, especially to the idea of reviving copyrights on works (films) that are currently in public domain. The consequences of such a proposal are unthinkable and the only possible good would be to further line the pockets of people who have an awful lot in their pockets to begin with.

The films in question are often of great historical and educational value and are currently difficult enough to view; under the proposal, they would be virtually inaccessible. These films, which have not been preserved well in the past, may be doomed to destruction if left for another 20 years in the hands of those who don't know or care about their preservation or their importance.

In addition, documentary-makers and others who have been able to create works of historical importance would not be able to afford to do so in the future if the copyright laws are changed—particularly if current public domain titles are re-copyrighted.

For these and many other philosophical reasons, I am against the proposal and hope you will work to defeat it.

Cordially,

*Patty Tobias*

Patty Tobias  
Editor, *The Keaton Chronicle*

cc: Senator Dennis DeConcini, Rep. William J. Hughes, Sen. Bradley, Rep. Menendez

# JORDEXX

TELEVISION  
INCORPORATED

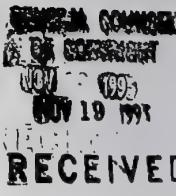
BY FAX: 202-707-4386

November 18, 1993

Ms. Dorothy Schrader  
 General Counsel  
 COPYRIGHT OFFICE  
 LIBRARY OF CONGRESS  
 Dept. #100  
 Washington, D.C. 20540

RE: DOCKET #RM 93-8

Dorothy:



Comment Letter

RM 93-8

No. 48

Let me voice my strongest opposition to the proposal to extend the copyright for works for hire from 75 to 95 years and let me vehemently oppose any efforts to revive the copyrights of films which are in the public domain.

Our company is one of those small businesses which actually hires U.S. workers and which actually picks up the slack when the Paramounts, IBM's and Kodaks of the world lay off thousands of workers at a clip.

We depend on the ability to sell public domain material, to alter it, to repackag it, to customize it. We would not be in business without it. The proposed restrictions and revamping of the public domain laws are merely a collusion between big business and big government to destroy the entrepreneurial spirit.

Please don't give in. Please vote against Docket #RM 93-8.

Thank you.

Cordially,



James J. Jordan  
 President

JJ/md

208 EAST 51 STREET  
 SUITE 2830  
 NEW YORK, NEW YORK 10022  
 (212) 722-2874  
 FAX (212) 831 9117

212 831 9117

11-18-93 11:41PM P001 #28

~~GENERAL COUNSEL  
LIBRARY OF CONGRESS~~

JULY 22 1993

THOMAS A. GILTNER  
ATTORNEY AND COUNSELOR AT LAW  
HILLSIDE PLAZA, SUITE 118  
6800 E. MOCKINGBIRD LANE  
DALLAS, TEXAS 75214-2495

TELEPHONE 214/826-8460  
TELECOPIER 214/824-8722

**RECEIVED**

November 19, 1993

DOROTHY SCHRADER, GENERAL COUNSEL  
Copyright Office, Library of Congress  
Department 100  
Washington, D. C. 20540

Comment Letter

RM 93-8

No. 49

Re: Proposed Extension of Copyright Laws  
Docket No. RM 93-8.

Dear Ms. Schrader:

Only last year the long standing copyright period for "works for hire" (magazines, newspapers, motion pictures) was extended from two 28 year periods (the second period requiring active renewal) of 56 years to one period of 75 years. The public, apathetic to this change and unaware of the personal relevance of copyright laws, offered little if any opposition. Now the large corporations and conglomerates who are able to exclude their works from entering public domain well beyond our lifetimes seek a further extension of this period 20 years. Even worse, the new 95 year period proposes another new and commonplace *ex post facto* law, making the period retroactive 95 years, which would include all works dating from 1898 to the present. This would effectively re-copyright current public domain works now in possession and use of the public, and how it would be enforced would be anybody's guess. In fact, with the original makers dead or long dissolved, the courts would be jammed forever in attempting to sort out these long-lost and expired "rights."

Obviously this extension, like last year's, is bad public policy and even worse law. The proposal stems from unmitigated greed and arrogance, founded upon the belief that an uninformed congress and public will accept such laws due to a perceived earned protectionism owed to the artists. Nothing could be further from the truth, or from the Constitution which provides for limited times such rights are to be protected, and the 1989 Supreme Court copyright case of *Stewart v. Abend*, which provided that the copyright term is limited so as not to permanently deprive the public of an artist's work.

Instances abound to illustrate why copyrighted protection should be of short duration. First of all, it is ultimately the public who recognizes the artist and makes him rich and famous. In the realm of motion pictures, the public pays the box office admissions and makes the studios, actors and all concerned with

DOROTHY SCHRADER, GENERAL COUNSEL  
November 19, 1993  
Page 2.

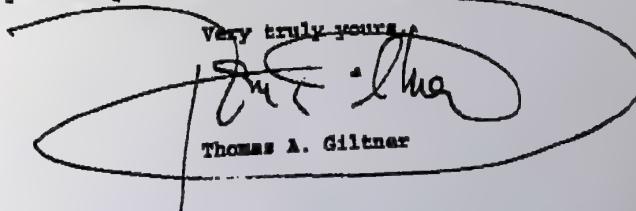
production a success or failure. At some point in time, these works should belong to the public who ultimately pays for them in the first place.

Second, with the passage of time, magazines, photos, newspapers and motion pictures become historical records. A new generation comes to learn what has gone on before. In many instances, long after the original artists have abandoned or lost interest in their past efforts, members of the public preserve and restore, at their expense, films and other works if available. The number of motion pictures lost to the maker's neglect and inadequate storage is staggering; even worse, the maker often destroys or discards these works. The classic example is Universal Studios in about 1948, when an enterprising executive decided to trash its vault of Lon Chaney silent films, most of them now lost forever. We should ask whether creative works, especially those of a perishable nature, copyrighted in 1994 will be around in 2089? We already know the answer. The purpose of the proposed law is to effectively deprive the public forever of works for which it supports, pays for and seeks to learn from, all in the interest of avarice and protectionism.

Third, the proposed extension is not compatible with the European proposal and is contrary to the purposes outlined in the United States Constitution. Except for the handful of large companies, there is no public benefit whatever. Public domain is used to create new works, such as documentaries and educational films of historical importance. None of this will be possible, and future generations will be deprived of earlier works.

For the above reasons I oppose the proposal to extend the copyright for works for hire from 75 to 95 years, as well as the proposal to revive the copyrights of films already in public domain. Thank you for your consideration of this matter.

Very truly yours,

  
Thomas A. Giltner

TAG/pdb

M  
ROTHY SCHRADER, GENERAL COUNSEL  
November 19, 1993  
page 3.  
cc.

Senator Dennis DeConcini, Chairman  
Subcommittee on Patents, Copyrights and Trademarks  
Rep. William J. Hughes, Chairman  
Subcommittee on Intellectual Property and Judicial  
Administration  
Senator Phil Gramm  
Senator Kay Bailey Hutchinson  
Rep. Sam Johnson  
Rep. Joe Barton  
Rep. Richard K. Armey  
Mr. David Pierce  
Mr. Greg Luce

November 22, 1993

Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100  
Washington, DC 20540

RE: Docket No. RM93-8

Dear Sir,

Please know that I oppose the proposal to extend the copyright for works for hire from 75 years to 95 years. I also oppose attempts to revive the copyrights of films already in the public domain.

These films offer tremendous benefits to the public domain. They are used to create documentaries and educational films. They are wonderful windows into our past culture. And afterall, films weren't produced to be stored in a closet.

Sincerely yours,



Phyllis L. Berlin  
3120 Heathstead Place  
Charlotte, NC 28210

GENERAL COUNSEL  
COPYRIGHT

NOV 22 1993

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Comment Letter

RM 93-8

No. 50

GENERAL COUNSEL  
LIBRARY OF CONGRESS

Comment Letter

NOV 22 1993

RM 93-8

No. 51

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9628 Pineapple Place  
Lakeside, CA 92040  
17 November 1993

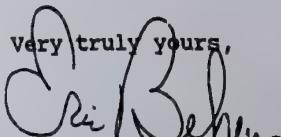
Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100, Washington, D.C. 20540

Dear Ms. Schrader,

As an educator, who uses public domain material in his classes, I am writing to express my opposition to the proposed 20 year extension of copyright protection to works for hire (re: Docket No. RM 93-8). If adopted, this would extend U.S. copyright protection to 95 years. Proponents claims that this extension is necessary to bring the United States "in sync" with the European Community. However, the current U.S. 75-year term for works for hire is already longer than the 70-year term for such works which has been proposed (but not yet adopted) in the European Community; the current term for works for hire in most European countries is, at present, 50 years.

I am also opposed to any attempts to revive the copyrights of works for hire from the Twentieth Century that have already fallen into the public domain.

It has been the public policy of this country to provide creative works with limited copyright protection for a finite term. At the end of this limited term of protection, creative works fall into the public domain so that they can receive the widest possible dissemination. The proposed 20 year extension of copyright for works for hire would contribute to the near-complete inaccessibility of many creative works having great educational and historical importance. For this reason, this proposal should not be submitted to Congress.

Very truly yours,  
  
Eric Beheim

NOV 28 1993

RECEIVED



Nov. 17th, 1993

Ms. Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100, Washington, DC 20540

Dear Ms. Schrader:

I am writing to you to express my concern over Docket No. RM 93-8. I am a scriptwriter and director myself, but I see no reason for, and many reasons against, extending the "works for hire" copyright from 75 to 95 years on motion pictures.

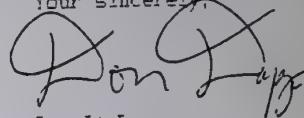
These are my reasons for suggesting denying this proposal:

1. This will not benefit the general public, only a few media conglomerates. By extending the copyright on works for hire will succeed in keeping classic motion pictures from viewing by the public and locked up in vaults for at least another twenty years.
2. Most of these media conglomerates do a poor job of maintaining these pictures. A Library of Congress report has shown that a great many of the films produced before 1950 have already been lost due to ownership apathy. Those still in vaults may not last another twenty years in their hands and it would be criminal to loose this valuable historic heritage.
3. It would return copyright movies that have already fallen into the public domain, to there original copyright holders, many of which no longer exist. Movies that, for the most part, having been abandoned by their copyright holders. Much of this footage has been used to create documentaries and other, new works of art. To try to retrospectively clear or eliminate public domain footage from these already existing works would by astronomical. Most likely what will happen is the new works will have to destroyed or join their older "cousins" in private storage vaults never to be seen again.
4. Many of these studio owned movies have been restored by the Library of Congress, UCLA, and others at tax payer expense. Letting them revert to mega-giant ownership means that these companies will be able to stick the general public with the bill, without any benefits to the tax payer what so ever. Even after preservation with tax payer funds, many of these films are still not available to the general public because the copyright holders won't let them.
5. The original creators of these works will not benefit by the extension, only media giants, who have already modified and mutilated many works by slopping color paint on them, redoing their music tracks, etc., while never asking the artists who created them if it was alright to do so.

Our copyright laws are already the longest in the world. Please do not deny us these films. They are part of our American

heritage, and it would be shameful that students, teachers, universities, film societies and just plain fans would never be allowed to see them because certain media giants want to own them. I urge you to fight this unreasonable copyright extension. If you would like further comments from me or would like to contact me for any reason on this subject, I include my address and phone number. Thank you for your time and consideration.

Your sincerely,



Don L. Dapp  
051 S. W. Caruthers  
Portland, Or. 97201  
(503) 274-0305

U.S. GOVERNMENT  
PRINTING OFFICE

NOV 22 1993

RECEIVED



Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100,  
Washington, D. C. 20540

ANN ARBOR SILENT  
FILM SOCIETY  
3001 BRAEBURN CIRCLE  
ANN ARBOR, MICH. 48108

November 17, 1993

Dear Ms. Schrader:

I oppose the proposal to extend the copyright for works for hire from 75 to 95 years.

I also oppose the attempt to revive the copyrights of films that are already in the public domain. These films are of great educational and historical importance.

Public domain is used to create new works, such as documentaries and educational films.

This proposal will benefit a handful of large companies, with no public benefit.

Please do not submit this proposal to Congress.

Very sincerely,

*Arthur Stephan*

Arthur Stephan  
President

November 17, 1993

1726 15th Avenue  
Apartment #23  
Seattle, WA 98122

Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100  
Washington, DC 20540

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NOV 22 1993

RECEIVED

Comment Letter
RM 93-80
No. 54

Re: Docket RM 93-8

Dear Ms. Schrader:

This is to urge that the government not adopt the proposal outlined under the referenced docket above to extend and/or modify copyright rules.

As a video enthusiast and collector, I know full well that were it not for the current public domain rules, the number of videos available, and at a reasonable price, in the open market would be dramatically smaller.

It is also a fact that many of the business entities demanding to re-activate expired copyrights treated their products with contempt and apathy when the copyrights were still active. Countless classic films were lost due to the total neglect of the copyright owners. It is only the recent advent of home video that has made their former product of great financial value and has spurred these companies into desperately trying to have the law changed.

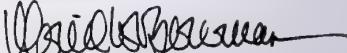
Moreover, there are also a lot of small businesses built on public domain video that would suffer if a dramatic percentage of public domain films reverted to previous copyright holders. And this is not to mention countless organizations which use public domain films to produce documentaries and educational films.

To adopt the proposed changes would only further limit access to films by the public, seriously damage video businesses everywhere, hinder our educational institutions, and add to our nation's unemployment problem.

On top of that, the proposed change is not in keeping the original intent of the Constitution and not compatible with the European copyright proposal.

I urge you to please not go with the above-cited docket proposal. It will harm the public and benefit a relative few vested interests. Don't reward those monied interests for their decades of crassness and contempt for their product.

Thank you.



David K. Bowman

cc: Patty Murray, US Senate; Slade Gorton, US Senate; Dennis DeConcini, US Senate; Jim McDermott, US House of Rep.; William Hughes, US House of Rep.; Greg Luce

Mr. & Mrs. Leo Ehrhart  
1060 Citrus Way, #101  
Delray Beach, FL 33445

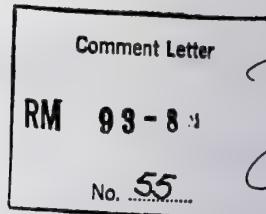
Nov. 16, 1993

Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress Dept 100  
Wash., D.C. 20540

I oppose the PROPOSAL to EXTEND  
THE Copyright for works for hire from  
75 to 95 YEARS.

I also oppose ANY ATTEMPTS to  
Revive THE copyrights of films that  
ARE ALREADY IN THE Public Domain.

REFER to DOCKET No. RM 93- 8



RESPECTFULLY yours,  
*Leo Ehrhart*

Ridge Farm, Illinois  
15 November 1993

Dorothy Schrader, General Council  
Copyright Office, Library of Congress  
Department 100, Washington, DC 20540

Comment Letter

RM 93-8

No. 56

Dear Dorothy Schrader

In reference to Docket No. N. M. 93-8 in the copyright office.

I am apposed to the passage of this bill which proposes to extend the copyrights for works for hire from 75 years to 95 years because it would, if passed, discourage private individuals, who are interested in preserving for posterity many of our valuable historical films which have become a part of our Americana Heritage and should be made available to the general public as part of the public domain. Passage of this bill would prevent these films from becoming available as public domain forever, to the present generation.

Sincerely yours,

Hugo Zeiter

Hugo Zeiter  
307 North First St.,  
Ridge Farm, Illinois  
61370

NOV 23 1993

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Comment Letter

RM 93-84

No. 57

NOV 22 1993

RECEIVED

Hon. Dorothy Schrader

Nov. 15, 1993

I oppose the proposal to extend the Copyright for works for hire from 75 years to 95 years. I also OPPOSE any attempts to revive the copyrights of films that are already in the Public Domain. Re. Docket No RM 93-8

A silent film historian, author and film collector.

George A. Katchmer  
Millersville, Pa. 17551



NOV 22 1993

RECEIVED

Comment Letter

RM 93-84

No. 58

Aerial view of BUTLER, PA, county seat of Butler County, located at intersection of U.S. 422 and State Routes 87, 68, and 356 just north of Pittsburgh.

Color Photo by Brian Miller

11-12-75

33

Dorothy Schrader,

I have read a memo the propose to extend copyright for works for hire from 75-95 yrs & am very opposed to this proposal. I hope you will act against it. I also am against renewing copyright on films already in the public domain. I feel the need of public right to know!

MA-716  
CPB326

Reverend Keith RM 93-8 Russell Forsythe

© 1990 Modern-Aid, Butler, PA 16001

To:

Dorothy Schrader  
General Counsel  
Copyright Office, Library of Congress  
Dept 100

Washington, DC 20540

GENERAL COUNSEL  
PA. BAR ASSOCIATION

NOV 22 1993

RECEIVED

Comment Letter

RM 93-8\*

No. 58

Aerial view of BUTLER, PA, county seat of Butler County,  
located at intersection of U.S. 422 and State Routes 8, 85,  
and 356 just north of Pittsburgh.

Color Photo by Brian Miller

11-12-75

Russel E. Forsythe  
428 S. Ebement Rd.  
Butler, PA 16001-2955

TRANS 100

Dear Dorothy Schindler,

I have had a meeting with  
you re: our proposal to extend copyright  
on works for life from 75-95  
years & am very opposed  
to this proposal & hope you  
will vote against it. I also am  
against renewing copyrights on  
items already in the public domain.  
I feel this violates public right.

I thank you!

Yours truly,

Robert D. Kett RM-93-8 Russel Forsythe

© 1990 Modern-Ad, Butler, PA 16001

To:

Dorothy Schindler  
General Counsel  
Copyright Office Library of Congress  
Dept 100  
Washington, DC 20540

MA-716  
CP6326

# MIDDLEMARCH

Ms. Dorothy Schrader  
General Counsel  
Copyright Office  
Library of Congress, Department 100  
Washington, DC 20540

GENERAL COUNSEL  
U.S. LIBRARY OF CONGRESS

Comment Letter

NOV 22 1993

RM 98-8

No. 59

November 15, 1993

RECEIVED

Dear Ms. Schrader,

This is to let you know that I vehemently oppose the proposal to extend the copyright for works for hire from 75 to 95 years. I also oppose any attempt to revive the copyright of films that are already in the public domain.

As a filmmaker, I both hold the copyright to my own films and frequently use clips from other films (those still in copyright and those in the public domain). I am therefore in a position to weigh the advantages and disadvantages of the protection afforded by a finite copyright term and the advantages and disadvantages of the wide availability of creative work afforded by that material being in public domain. There is no question whatsoever in my mind that the shorter term of copyright protection is of much greater benefit both to myself as creator and to the general public. 75 years of "ownership" and "profit" is plenty of incentive to continue to create. The benefit to the public of the wide distribution and access to creative works is immeasurable.

The 75 year copyright term for motion pictures is already the longest in the world. I urge you to oppose the proposal to extend the copyright to 95 years and also to oppose the revival of the copyright of films that are already in the public domain.

Sincerely,



Muffie Meyer

ELLEN HOVDE . MUFFIE MEYER

132 West 21st Street Sixth Floor New York City 10011 Tel. (212) 645-2324 Fax (212) 645-2

William B. Cooney  
P.O. Box 566  
Norton, Ma., 02766  
**GENERAL COUNSEL**  
**OF COPYRIGHT**

17

Comment Letter

November 18, 1993

DOROTHY SCHRADER, GENERAL COUNSEL  
COPYRIGHT OFFICE, LIBRARY OF CONGRESS  
DEPARTMENT 100, WASHINGTON, DC 20540

Dear Ms. Schrader:

NOV 29 1993

RM 93-R

No. 60

RECEIVED

The intention of this letter is that I am opposed to the proposal of extending the copyright for works of hire from 75 years to 95 years. I am also in opposition of any attempts to revive the copyrights of films that are already in the public domain.

It will serve no other purpose than to satisfy certain individuals of keeping copywritten material to themselves which I feel is quite selfish.

It is of no use if an artist keep their talents to themselves locked up in obscurity, why, you might as well throw the works out. It would be nothing more than singular personal gratification.

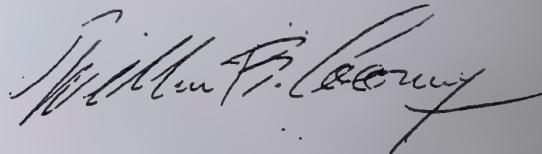
I do believe, however, that original works should be maintained and preserved no matter what they are. After all, at least Mr. Ted Turner has enough respect to make brand new prints of classic works that he owns in black and white, though he colorized a few

As a collector of 16 MM movie films I would like to think that if a copy of a work of art in the 16 MM format became available, I would like to at least have the option of purchasing or renting it with no personal monetary gain on my part.

I am opposed to changing anything about the original work of art, and I feel that the preservation of such works should and shall be maintained - but please do not take away the option of enjoying the talents of our artists past and present.

Respectfully Yours

WILLIAM B. COONEY



Harris Lentz, III  
3925 Appling Rd.  
Bartlett, TN 38135

GENERAL COUNSEL  
OF COPYRIGHT

NOV 24 1993

RECEIVED

November 16, 1993

Ms. Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100,  
Washington, D.C. 20540

Comment Letter

RM 93-8

No. 61

RE: Docket No. RM 93-8

Dear Ms. Schrader:

I am writing to express my concern about the proposal to extend the copyright for works for hire for an additional 20 years. I strongly oppose this proposal, as well as any attempt to revive copyrights on films that are currently in the public domain. This attempt will jeopardize the educational and historical benefits that are gained from the public's general access to these works.

I hope that this proposal will be withdrawn by the Library of Congress, or defeated should it be considered by Congress.

Thank you very much for your time.

Sincerely,

  
Harris Lentz, III

CC: Senator Dennis DeConcini  
Representative William J. Hughes  
Senator James Sasser  
Senator Harlen Matthews  
Representative Don Sundquist  
Representative Harold Ford  
Representative John Tanner  
Representative Jim Cooper  
Vice-President Albert Gore, Jr.  
Mr. David Pierce

NOV 17 '93

Dorothy Schrader, General Counsel

Copyright Office, Library of Congress

GENERAL COUNSEL  
OF COPYRIGHT

NOV 24 1993

RECEIVED I enjoy watching older, obscure Pu

domain TV shows that otherwise would never be released because they're not popular enough.

I'm AGAINST the changes in copyright

LAWS THAT revive copyrights of films in PUBLIC DOMAIN

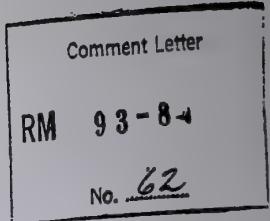
BECAUSE it would prevent movies and TV shows that I like to collect from being AVAILABLE.

THEY WOULDNT BE AVAILABLE BECAUSE their owners WOULD NOT THINK IT WOULD <sup>be</sup> Profitable. THE FEW WHO ENJOY that show would BE DENIED IT BECAUSE they ARE SMALL.

THE COPYRIGHT LAWS ARE FINE AS THEY ARE WITH PUBLIC DOMAIN films available to all to seek them

Sincerely, Frank Bonilla

FRANK BONILLA  
395 ROBINSON ROAD  
RIVERSIDE, IL 60546



**GENERAL COUNSEL  
OF COPYRIGHT**

NOV 24 1993

**RECEIVED**

Comment Letter

RM 93-8

No. 63

November 18, 1993

Dorothy Schrader, General Counsel  
Copyright Office  
Library of Congress  
Department 100  
Washington, DC 20540

Dear Ms. Schrader,

I'm writing to express my opposition to any extension of the terms of copyright; I understand that such a proposal is currently under consideration by your office. I'm even more strongly opposed to any retroactive restoration of copyright to works now in the public domain. As a writer who deals with historical subjects, my ability to utilize source material produced earlier in this century will be directly threatened by either of these proposals.

Sincerely,

*David Balsom*

David Balsom  
1435 Burns St  
West Linn, OR 97068

**GENERAL COUNSEL  
OF COPYRIGHT**

NOV 24 1993

**RECEIVED**

Comment Letter

RM 93-8

No. 64

Dear Ms. Schrader:

19NO093

I oppose the proposal to extend the copyright for works for hire from 75 to 95 years. This is unnecessary and takes the US "out of sync" with the European Comm. Proposal of 70 years. I also oppose any attempt to revive the copyrights of films that are already in the public domain.

Vera Mainz  
402 Dodson Dr.  
Urbana IL 61801

**GENERAL COUNSEL  
OF COPYRIGHT**

NOV 24 1993

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Comment Letter

RM 93-8

No. 65

11-18-93



SAN FRANCISCO'S FISHERMAN'S WHARF  
An aerial view of Fisherman's Wharf showing the famous fishing fleet boats at the docks. Oakland-Bay Bridge and Yerba Buena Island can be seen in the background.

MS. SCHRADER - WE ARE  
OPPOSED TO THE EXTENSION  
OF COPYRIGHTS FOR WORKS  
FOR HIRE FROM 75 TO 95  
YEARS. DOCKET #RM93-8  
IS CLEARLY NOT IN THE  
INTEREST OF THE AMERICAN  
PUBLIC. FILMS IN THE  
PUBLIC DOMAIN SHOULD  
REMAIN THERE - FOR THE  
ENJOYMENT OF ALL.

C12002 COLOR BY NINE ROBERTS  
FRANKS. THE HALLS SAN MATEO, CA.



29  
DOROTHY SCHRADER  
General Counsel  
COPYRIGHT OFFICE  
LIBRARY OF CONGRESS  
DEPT. 100  
WASHINGTON DC  
20540

11-19-93  
22

GENERAL COUNSEL  
OF COPYRIGHT.

NOV 24 1993

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Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress  
Department 100, Washington, DC 20540

Comment Letter

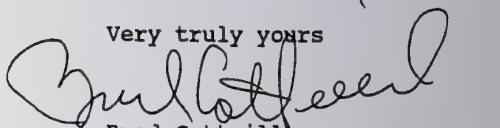
RM 93-8

No. 66

Dear Ms. Schrader,

I oppose the proposal to extend the copyright for works for hire from 75 years to 95 year. I also include in my opposition any attempts to revive the copyrights of films that are already in the public domain. As a collector of films on video I would rather have a large variety of titles to choose from in public domain then see these titles revert to their original owners who are under no obligation to preserve these films, or make them available for public viewing. I love movies and I like owning them on video tape and this law would contribute to the inaccessibility of a large portion of our motion picture heritage. I don't see how this law could possibly benefit the public.

Very truly yours

  
Brad Cottrill  
3205 Los Feliz Bl. Apt. 8-340  
Los Angeles, CA 90039

RM 93-8

Dear Dorothy Schrader,

November 15, 1993

No. 67

There is no justification for extending the current copyright terms. I refer to Docket #RM 93-8.

Extending the current term of copyright will guarantee that the public will continue to be deprived of hundreds of American films, long ago abandoned by their creators, but still rotting on some shelf, still protected by copyright.

Thousands of nearly forgotten films are awaiting the freedom of public domain. Frank Capra's "IT'S A WONDERFUL LIFE" was only recognized as a classic after it fell into the public domain and was widely seen for the first time. With the advent of the VCR, think of the exposure these films will NOT receive in video stores, classrooms, television or cable. Most, if not all of these films will be lost forever due to ownership apathy if the copyright terms are unreasonably extended.

As proposed, the owners of these copyrights do nothing in return for this extra copyright protection. They assume no obligation to preserve these films, make them available or even to grant permission for archive screenings. Where is the public benefit in that?

Public domain is the widest dissemination of American films (among other creative works) that would otherwise be lost forever. If the copyright terms are extended as proposed in Docket #RM 93-8, you can kiss a big chunk of American history goodbye. Please don't allow this to happen.

Thank you for your time.

GENERAL COUNSEL  
OF COPYRIGHT

NOV 24 1993

RECEIVED

David A. Drake

9340 NW 53rd Street

Sunrise, FL 33351

**GENERAL COUNSEL  
OF COPYRIGHT**

NOV 24 1993

**RECEIVED**

Dear Ms. Schrader:

Comment Letter

RM 93-8

No. 68

(516) 754-6207  
FACSIMILE (516) 754-6207  
INTERNET D.BROCKWAY1@GENIE.GEIS.COM

David Pierce and Greg Luce have brought to my attention the proposal to extend the copyright for works for hire from 75 to 95 years.

I oppose this extension.

As Greg and David point out, the extension would probably result in the permanent loss of motion picture films. Those of us who collect films - or merely try to see them - are aware of the pervasive and documented history of apathetic copyright owners who are not inclined to preserve or make available their properties, due to perceived low commercial value. Many films which would be most directly affected negatively by the copyright extension are silent films, of which very few remain. Allowing these films to enter the public domain represents a sensible step not only towards preservation, but toward the simple and desirable goal of allowing these works to be seen.

Speaking personally as someone interested in film history and preservation, it seems to me no mere coincidence that the overwhelming majority of the silent films I have been able to see to date are those which have fallen into public domain. There are many others that I can't get to see because copyright protects them and because there is not sufficient commercial incentive for their owners to exploit them. As a result, these films sit on the shelf and disappear, either in fact or at least from public view.

As someone who has loaned films from my own collection back to the studios which originally created them - since those studios had no copies -- I speak from some experience. The people who created these movies have ample opportunity during the 75 year copyright term to profit from their creations. Now, the law should guarantee that their works will continue to be seen and enjoyed.

That purpose, it seems to me, is best served by allowing films to enter the public domain.

The current effort to extend copyright is contrary to the purpose of copyright as outlined in the constitution, contrary to the best interests of the films themselves, and certainly contrary to the public benefit.

I urge you to take steps necessary to defeat the proposal (Docket No. RM 93-8).

Thank you for allowing me to express my opinion.

Sincerely,

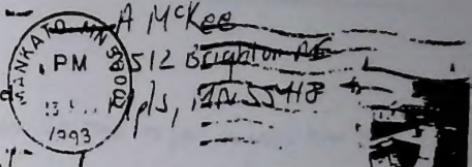
Dorothy Schrader, General Counsel  
Copyright Office, Library of Congress,  
Department 100, Washington D.C. 20540.

cc: Senator Dennis DeConcini; Rep. William J. Hughes

November 23, 1993

11 3/93

F<sup>rom</sup> a cage, Lock, Shock, and Barrel  
watch the show in Oogie's lair.



I oppose the proposal  
to extend the copyright  
for works for hire from  
75 to 95 years. I also  
oppose any attempts to  
resurrect the copyright of  
public domain films.

Re: Docket No. RM 93-8

Dorothy Schrader, Cen. Cntr.  
Copyright Office, Lib. of Cong.  
Dept 100

Washington DC

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COPRIGHT

NOV 29 1993

20540  
Comment Letter

RM 93-8  
No. 69

JIM BURTON'S  
NIGHTMARE  
BEFORE  
CHRISTMAS

A Postcard Book • Running Press Book Publishers • Philadelphia

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GENERAL COUNSEL  
OF COPYRIGHT

NOV 29 1993

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Comment Letter

RM 08-82

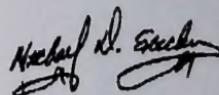
No. 10

Dorothy Schrader,

I AM WRITING TO YOU in opposition to  
Docket NO. RM 93-8, that is; the proposal to extend the copyright  
for works for hire from 75-95 years. I also oppose any effort  
to revive the copyrights of films that are already in the  
public domain. To allow this docket to pass is preposterous.  
It is also an insult to the public; the people that support the artists.

thank you for your time.

Regards,

  
Michael D. Erickson

MICHAEL D. ERICKSON  
598A Ried  
Columbia, N.J. 07832